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No. 05-1448

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

JEFFREY H. BECK,
Liquidating Trustee of the Estates of
Crown Vantage, Inc. and Crown Paper Company,
Petitioner,

v.

PACE INTERNATIONAL UNION,
EDWARD J. MILLER and JEFFREY D. MACEK,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENTS' SUPPLEMENTAL BRIEF AND NEW MATTER

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January 17, 2007

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

COUNTERSTATEMENT OF QUESTIONS PRESENTED

An employer with conflicting interests as sponsor, trustee, and administrator of its employees' pension plans may decide to terminate the plans. The questions presented are:

1. Whether the employer owes a fiduciary duty under ERISA to consider all options available for providing benefit liabilities in terminating the plans.

2. Whether merger into a multiemployer pension plan is a method of providing benefit liabilities in terminating a single-employer plan under ERISA.

LIST OF PARTIES AND RULE 29.6 STATEMENT

Respondent PACE International Union recently merged with the United Steelworkers of America (USW), AFL-CIO. PACE and USW were and are unincorporated associations.

The full name of the merged entity is United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

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RESPONDENTS' SUPPLEMENTAL BRIEF AND NEW MATTER

ARGUMENT

I. MATTERS NEWLY REVEALED ON DECEMBER 21, 2006 BY PETITIONER AND NOT BRIEFED TO THIS COURT SUGGEST THAT CERTIORARI SHOULD BE DENIED AS UNRIPE.

On December 21, 2006 the Petitioner, Jeffrey H. Beck, filed a motion in the related bankruptcy case that disclosed new matters that could dramatically impact this case and affect its outcome. The Petitioner's motion reveals the receipt

of approximately $1.7 million as proceeds of a settlement between The Hartford Financial Services Group, Inc. and attorneys general of Connecticut and New York. The settlement provides money "directly to the pension plans harmed by the scheme" of "secret kickbacks" to brokers of pension annuities, including the pension annuity of this case. App. 39a. That annuity resulted from the fiduciary breach described in the Connecticut complaint against Hartford. App. 46a, 66a-67a. The Petition defends this annuity but never mentions the wrongdoing of Hartford and the broker. *See* Petition at 7. In bankruptcy court the Petitoner seeks to apply the settlement proceeds to general funds available to certain creditors, rather than to the pension plan. App. 1a.

These new matters implicate counsel's "continuing duty to inform the Court of any development which may conceivably affect the outcome," *Fusari v. Steinberg*, 419 U.S. 379, 391 (1975) (Burger, C. J., concurring). Unfortunately, the Petitioner's failure to come forward with the information of the Hartford settlement precludes the possibility of an adequate record upon which to decide whether to grant certiorari.

The bankruptcy court has not yet heard or considered Petitioner Beck's motion, the new matters disclosed in the motion, or Beck's request that the settlement proceeds go to the creditors. On January 10, 2007, Respondents filed an Objection and Request for Hearing on the matter. App. 18a, 37a. Other interested parties, including government agencies, may wish to speak on Beck's motion, which mentions the possible interest of the Internal Revenue Service. App. 4a.

Petitioner Beck has not offered a reason for keeping this information from the Court, the parties, and the interested government agencies throughout the entire briefing period. The Petitioner himself most likely learned of the settlement funds no later than early July 2006, on receiving a letter from a Hartford Insurance entity. *See* App. 6a. The letter informed Petitioner that the Crown Vantage pension plan annuity of

about $85.9 million entitled him to a pro rata share of settlement of more than $1.7 million. *Id.* Beck signed Hartford's release form to obtain the funds on October 6, 2006. App. 17a.

The Petitioner's Reply brief filed August 8, 2006 makes no reference to the new matters of the settlement proceeds, their origins in a scheme that harmed the pension plan, or Petitioner's intentions respecting the proceeds. The Solicitor General too was apparently denied opportunity to address the new matters disclosed, for his brief was filed only on December 22, 2006, the day following the appearance of these new matters in the Petitioner's bankruptcy motion.

The new matters disclosed in Petitioner's motion show a fiduciary failure in selecting between annuity providers, *Waller v. Blue Cross*, 32 F.3d 1337, 1342-1344 (9th Cir. 1994). The bankruptcy court would have viewed the transaction differently in light of the kickback scheme. *See* Petition App. 65. The facts are not developed, and the controversy therefore is not ripe for review. *See Socialist Workers Party v. Gilligan,* 406 U.S. 583, 587-88 (1972) ("extraordinarily skimpy" record lacks the "sort of proved or admitted facts that would enable us to adjudicate this claim"); *Doe v. Bush,* 323 F.3d 133, 139 (1st Cir. 2003) (Fitness "typically involves subsidiary queries concerning finality, definiteness, and the extent to which resolution of the challenge depends upon facts that may not yet be sufficiently developed.") Respondents are concerned that this Court be presented with an adequate record. Without it, the case should be considered unripe. "The ripeness doctrine is 'drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction,'" *National Park Hospitality Ass'n v. Department of Interior*, 538 U.S. 803, 808, (2003), quoting *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43, 57, n. 18 (1993). The Court may consider ripeness on its own motion "even in a case raising

only prudential concerns." *Id.* (citing *Regional Rail Reorganization Act Cases,* 419 U.S. *id.* 102, 138 (1974).

In the absence of a clear factual record of this new claim of Petitioner to assets derived from the pension fund, any decision here might easily miss the mark and fail in guiding the lower courts and government agencies.

Although the annuity was purchased using pension assets, App. 3a, Petitioner Beck now claims the settlement sum as plan *sponsor* and for bankruptcy creditors, rather than as an ERISA fiduciary. *Id.* The Petitioner's claim to the money thus presents an issue of application of ERISA fiduciary duties to one who is a plan trustee or administrator and at the same time the plan's sponsor—an issue at the heart of this case.

Such facts as are available appear below and in the Appendix, which contains:

A. Liquidating Trustee's Motion To Apply Settlement Proceeds As General Funds, filed December 21, 2006 in Bankruptcy Court;

B. Objection to Motion To Apply Settlement Proceeds As General Funds; Request for Hearing, filed January 10, 2007 in Bankruptcy Court;

C. Press Release of State of Connecticut Attorney General's Office, describing settlement reached with Hartford, dated May 10, 2006;

D. Excerpts of Complaint against Hartford filed by the Connecticut Attorney General;

E. Excerpts of Agreement with States' Attorneys General, dated May 10, 2006.

A. The Newly Disclosed Hartford Settlement Presents Facts that Could Affect the Outcome of this Case.

The bad conduct of Hartford and the broker revealed in the bankruptcy case make the record inadequate and the case unripe. The taint of fiduciary breach in the process of *selecting* the Hartford annunity calls for inquiry to prevent an unjust result. While the facts of this new matter have only begun to come out, it is clear that their effects could potentially be dispositive of issues here.

For example, it could well turn out that pension assets were lost to the Hartford kickback scheme because Crown Vantage pension trustees, acting in haste, failed to exercise the care of an ERISA fiduciary as they relied on the broker and Hartford. In that event, which the existing record does not contradict, the Petitioner's arguments that termination decisions are sponsor functions would be largely irrelevant.

A different example may further illustrate the problem of unripeness. If Petitioner Beck were now permitted to keep the Hartford Settlement Funds, the rationale for allowing it could disturb the administration of the "surplus" plan assets held by court order as a remedy for plan participants in this case. Petition App. 74-76. A record below is needed on newly disclosed matters.

Necessary findings below could alter the outcome in a wide variety of ways. If it is found that Petitioner may now accept for the bankruptcy liquidation trust creditors a windfall of $1.7 million from Hartford, on similar principles the bankruptcy trust might be charged with reimbursing the pension fund for previous transfers to Hartford on account of errors and re-calculations (about $1.8 million). App. 21a-22a.

As pension assets went to Hartford for the annuity, the courts below will likely hold the Hartford annuity settlement

proceeds to be plan assets as well. As the plan fiduciary, Beck must place these proceeds in the pension account.

Effective review by the Court requires an adequate record. *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148 (1967). The Petitioner's failure to bring these important new matters to this Court's attention has unfairly precluded the timely development of that record.

B. Petitioner's Claim for Settlement Money Conflicts with His ERISA Fiduciary Duties.

Petitioner Beck's motion in the bankruptcy case, in seeking approval to "apply" the settlement proceeds as general funds, not pension assets, appears to flout the intention of the Hartford Settlement. While Beck's motion would make the funds available only to certain bankruptcy creditors, the official web site of the Connecticut Attorney General says otherwise:

> The settlement will provide $16.1 million **directly to the pension plans harmed by the scheme** and $1.95 million in penalties each to Connecticut and New York. Under these agreements, The Hartford secretly paid brokers millions of dollars in exchange for brokers steering pension plan purchases of annuities, and providing inside information on competitive bidding.

App. 39a (emphasis supplied).

The Complaint that led to the Hartford settlement describes the broker for the annuity in this case, Dietrich & Associates, as an ERISA fiduciary, App. 63a, required "to act solely for the plan it is representing and not for itself or some third party." App. 64a, ¶ 98. But Hartford "saddled the brokers with a conflict of interest that induced the brokers to breach their fiduciary duty," App. 66a, by secretly promoting Hartford, App. 46a. All of this would have affected the trial in this case, and it will also affect the outcome in this Court, which is asked to rule on the scope of ERISA fiduciary duties during plan termination. The settlement proceeds' origin in

ERISA fiduciary breach is the sort of information that would assist this Court's review. The settlement was intended to directly benefit "pension plans harmed by the scheme," as explained by the Connecticut Attorney General. App. 39a. Yet Beck contends in bankruptcy court that the pension plan "does not have any interest in such funds," App. 4a.

Beck's position that the Settlement should go to creditors, conflicts with his duties as pension plan fiduciary. His secrecy in the matter during briefing here likewise favors the creditors' interests.

This matter is not ripe for this Court's review in the absence of a reliable factual record of Beck's participation in the Hartford Settlement and of the decision by the Crown Vantage Board to purchase the annuity subject to Hartford's kickback scheme. Beck's motion in the bankruptcy case must be decided and no date has been set for hearing.

Respondents desire to develop facts in discovery and otherwise, as indicated in their Objection filed January 10, 2007 in bankruptcy court. App. 18a-36a.

II. THE BRIEF OF THE UNITED STATES AS *AMICUS CURIAE* FAILS TO SHOW THAT CERTIORARI IS WARRANTED.

The United States did not join in the Petitioner's key arguments. The Amicus Brief refrains from joining the Petitioner's insistence on a split in the circuits as ground for certiorari, speaking instead of "tension" with other courts of appeal. Br. of *amicus curiae*, United States at 17. In doing so, the United States incorrectly portrays the Ninth Circuit's decision in this case as departing from the rule that a decision to terminate a pension plan is a sponsor function not subject to ERISA fiduciary rules. That is not an issue in this case.

The implicit recognition that no split of authority exists among the circuits sets the Amicus Brief against the Petitioner's position. Viewed through the lens of this litigation as it progressed through the courts below, this is not surprising, as neither the Pension Benefit Guarantee Corporation nor the Department of Labor objected to the result at trial. Both agencies monitored the case from the beginning. A PBGC attorney testified at trial that he never stated any reservations about the plan merger proposed by PIUMPF. Petition App. 62.

There is no indication that ERISA enforcement has been or will be weakened in the Ninth Circuit. The speculation that employer reversions will be discouraged, Br. of *amicus curiae* United States at 17, is unconvincing because the decision below does not require pension mergers or prohibit reversions. Merger with multi-employer plans tends to reduce pension failures, because of the ability of multi-employer plans to spread risk and reduce the exposure to problems of a particular employer.

The view of PBGC that annuity purchase should be preferred over methods that "otherwise provide all benefit liabilities," 29 U.S.C. § 1341(b)(3)(A), Br. of *amicus curiae*, United States at 13, does not hold up under the history of this case. While annuities from Hartford appeared to be safe, we now know Hartford overcharged and paid secret kickbacks. App. 41a. Fiduciary scrutiny could have protected the plan. Benefit liabilities were miscalculated in ways large and small, entailing substantial administrative and legal effort, as well as a massive transfer of $1.8 million in additional pension assets to Hartford to cover benefits. Had the trial court allowed the reversion Petitioner seeks, those assets would not have been available.

There is wisdom in the ERISA statutory choice of alternative methods for providing for all benefit liabilities. PBGC's argument based on interpreting regulations about distribution is out of place in a discussion of merger. In any case, there

was no merger and the Ninth Circuit did not hold that merger was either required or forbidden.

The recent disclosure of the Hartford Settlement reveals yet another shocking problem with the annuity: secret kickbacks to specializing brokers. The Petitioner's attempt to claim the settlement sum, while withholding it from view for months during the briefing here, shows the wisdom of the statute in allowing methods other than annuity purchase.

The Ninth Circuit's stress on ERISA fiduciary obligations is clearly the touchstone and one that is not controversial in this Court.

CONCLUSION

For the reasons stated above and in the Respondents' Brief in Opposition, the Petition for Certiorari should be denied.

Respectfully submitted,

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January 17, 2007

APPENDIX

APPENDIX A

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

Case No. 00-41584 N

In re CROWN VANTAGE, INC., CROWN PAPER, INC.,
Debtors,

Chapter 11
(Jointly Administered)
Employer I.D. # 54-1752384

Place: Courtroom of the Hon. Randall J. Newsome
Date and Time: To Be Determined

MOTION TO APPLY SETTLEMENT PROCEEDS AS GENERAL FUNDS

Jeffrey H. Beck (the "Trustee"), Trustee of the Crown Paper Liquidating Trust (the "Crown Liquidating Trust"), hereby moves this Court to authorize the Crown Liquidating Trust to apply and use the proceeds in the amount of One Million Seven Hundred Fourteen Thousand Seventy-Nine Dollars and Thirty-Eight Cents ($1,714,079.38), received from Hartford Financial Services Group ("Hartford") pursuant to the settlement documents attached to this Motion, as general assets of the Crown Paper Liquidating Trust and as Recovery Proceeds as that term is defined in the Crown Liquidating Plan of Reorganization.

I. Bankruptcy Proceedings

1. On March 15, 2000 (the "Petition Date"), Crown Vantage, Inc. and Crown Paper, Inc. (collectively, the "Debtors") each filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code. By order dated March 16, 2000, the Debtors' cases were ordered to be jointly administrated under Case No. 00-41584 N.

2. By order dated November 19, 2001, this Court confirmed the Debtors' Joint Liquidating Plan of Reorganization (the "Crown Liquidating Plan of Reorganization"), which provided for the creation of the Crown Liquidating Trust and appointed Jeffery H. Beck to serve as Liquidating Trustee of the Crown Liquidating Trust.

3. Pursuant to § 7.3 of the Crown Liquidating Plan of Reorganization, upon its Effective Date, all of the Debtors' assets vested automatically in and were transferred to the Crown Liquidating Trust and constitute Liquidating Trust assets. Cash constituting the proceeds from the disposition of Liquidating Trust Assets (other than the proceeds from the disposition of Retained Assets) are defined by the Crown Liquidating Plan of Reorganization as "Recovery Proceeds."

4. The Crown Liquidating Plan of Reorganization became effective on or about March 1, 2002, and the Crown Paper Liquidating Trust Agreement (the "Liquidating Trust Agreement") was executed, dated, and became effective, as of March 1, 2002.

II. Hartford Settlement

5. On May 10, 2006, Hartford entered into a settlement agreement (the "Hartford Agreement") with the Attorney's General of Connecticut and New York concerning Hartford's use of expense reimbursement agreements in its terminal/maturity funding group annuity line of business. As part of the Hartford Agreement, Hartford paid 16.1 million dollars into a fund for distribution to certain eligible plan sponsors

that purchased terminal/maturity funding group annuities from Hartford between January 1, 1998 and December 31, 2004. Such an annuity was purchased for the Crown Vantage, Inc. Pension Plan No. 7 ("Pension Plan No. 7").

6. Hartford's records indicated that the Trustee is an eligible customer and entitled to receive a portion of the fund upon tendering a release in the appropriate form. Attached to this notice as Exhibit "1" is the correspondence from Hartford to the Trustee, together with the form of release and a notice of settlement information.

7. The Trustee procured the unanimous consent of the Trust Committee of the Crown Liquidating Trust to accept the funds and, on October 6, 2006, executed Hartford's form of release that was delivered under the cover of a letter of October 17, 2006. A copy of the transmittal letter and executed release are attached as Exhibit "2."

8. On November 22, 2006, the Trustee received from Hartford the sum of One Million Seven Hundred Fourteen Thousand Seventy-Nine Dollars and Thirty-Eight Cents ($1,714,079.38, the "Hartford Funds").

9. As indicated in the attached documents, the Hartford Funds are the proceeds of a settlement between Hartford and the Attorney's General of Connecticut and New York and was paid to the Trustee as successor to Crown Paper Company as sponsor of Pension Plan No. 7.

10. The payment was not derived from the amount of assets in the Pension Plan No. 7 or any other financial figure directly related the assets in Pension Plan No. 7; rather it was calculated by Hartford using a formula in the Hartford Agreement involving the sale of annuities where, at the time of the sale, a production based incentive agreement was in place and resulted in either a payment to a broker or consultant, or other related criteria.

11. Hartford has indicated to counsel for the Liquidating Trust that it considers the settlement to involve claims of

the Plan Sponsors, not of the Pension Plans themselves and, accordingly, that Hartford would not pay any funds to retirement plans; rather it would pay only to plan sponsors.

12. Based upon the foregoing, the Trustee believes that the Hartford Funds are cash proceeds from the disposition of the Trustee's right of recovery under a settlement between Hartford and Crown as sponsor of Pension Plan No. 7 and, as such, are general assets of the Liquidating Trust and Recovery Proceeds.

13. Under the terms of the Crown Liquidating Plan of Reorganization, the Pre-Petition Lenders holding Class 2 Claims are entitled to participate in their appropriate share of such Recovery Proceeds.

14. Pension Plan No. 7 is the subject of litigation regarding which the United States Supreme Court is entertaining a writ of certiorari filed on behalf of Crown on May 10, 2006.

15. Because of the terms of the agreement under which Hartford made its payment to the Trustee, the terms of Crown Liquidating Plan of Reorganization and Hartford's indication that it would not pay any funds to a qualified retirement plan, the Trustee believes that the Hartford Funds are general assets of the Liquidating Trust and are Recovery Proceeds. The Trustee further believes that Pension Plan No. 7 does not have any interest in such funds. However, the parties to the pending litigation concerning Pension Plan No. 7, the Internal Revenue Service and/or other parties might have an objection to the treatment of the Hartford Funds as such general assets. Thus, in the interests of full and complete disclosure and in an abundance of caution, the Trustee believes that such parties and all parties entitled to receive notices in the Crown cases should be given notice of the receipt of the Hartford Funds and the opportunity to object to this request that the Court approve the treatment of such Hartford Funds as general assets and Recovery Proceeds of the Liquidating Trust.

16. Based upon the agreements and documents under which the Hartford Funds were received by the Liquidating Trust, the Trustee requests that this Court determine that the Settlement Funds are general assets of the Liquidating Trust, that they are Recovery Proceeds and that they may be used by the Trustee pursuant to the terms of the Crown Liquidating Plan of Reorganization.

17. In the event no objection to the Trustee's application of the Settlement Funds is received by the date set in the notice of this motion, the Trustee respectfully requests that this Court enter its Order confirming the Trustee's proposed application of the Hartford Funds.

18. In the event any written objections are filed and served on the Trustee within the time period set in the notice of this motion, the Trustee requests that this Court set a hearing at which argument upon such objections may be heard.

WHEREFORE, the Trustee respectfully requests that the Court consider and grant this Motion and authorize the Trust to apply and use the Hartford Funds as general assets and Recovery Proceeds of the Crown Paper Liquidating Trust as defined by the Crown Liquidating Plan of Reorganization

DATED this 21st day of December 2006.

Respectfully submitted,

BILZIN SUMBERG BAENA PRICE
& AXELROD LLP

By:/s/ David W. Trench
David W. Trench (admitted pro hac vice)

and

BIALSON, BERGEN & SCHWAB

By: /s/ Kenneth T. Law
Kenneth T. Law

Attorneys for Jeffrey H. Beck, the Liquidating Trustee of the Crown Paper Liquidating Trust

In re Crown Vantage, Inc.
In re Crown Paper Co.

Case No. 00-41584 N (Jointly Administered)

EXHIBIT 1

TO

MOTION TO APPLY SETTLEMENT PROCEEDS AS GENERAL FUNDS

Jeffrey H. Beck, TTEE [Logo]
Crown Paper Co.
225 NE Mizner Blvd. Suite 780
Boca Raton, FL 33432

July 10, 2006

Dear Mr. Beck,

On May 10, 2006, The Hartford Financial Services Group ("Hartford") entered into a settlement agreement (the "Agreement") with the Connecticut and New York Attorneys General concerning Hartford's use of expense reimbursement agreements in its terminal/maturity funding group annuity line of business. As a part of the Agreement, Hartford will pay $16.1 million into a fund (the "Fund") for distribution to certain eligible plan sponsors that purchased terminal/maturity funding group annuities from Hartford between January 1, 1998 and December 31, 2004 ("Eligible Customers").

Our records indicate that you are an Eligible Customer. You are therefore entitled to receive a portion of the Fund, after first tendering a release in the form enclosed.

Specifically, your purchase of group annuity contract(s) GA 20341 for which you paid $85,924,700.00 in premium,

entitles you to receive at least $1,714,079.38 from the Fund. This amount may increase if there is less than full participation in the Fund by other Eligible Customers.

If you wish to participate in the Fund, you must sign a release in the form enclosed and return it before November 7, 2006. If you wish to decline participation in the Fund, no further action on your part is necessary.

Enclosed for your review, please find an explanation of The Hartford's settlement agreement with the Connecticut and New York Attorneys General. A copy of the Agreement is available on The Hartford's website at www.thehartford.com. Additional information is also available on the Connecticut Attorney General's website (http://www.ct.gov/ag/cwp/view.asp?A=2095&Q=305408) and on the New York Attorney General's website (http://www.oag.state.ny.us/press/2006/may/may10a_06.html). You may direct any additional questions that you may have regarding your eligibility to participate in the Fund, or the amount you are entitled to receive, to me at the contact information below.

Sincerely,

Ronald S. Apter, Esq.
Vice President, Assistant General Counsel and Deputy
Director of Compliance
The Hartford Financial Services Group, Inc.
860-547-2311
Ronald.Apter@thehartford.com

RELEASE

This RELEASE (the "Release") is executed this __ day of __, 2006 by RELEASOR (defined below) in favor of RELEASEE (defined below).

DEFINITIONS

"RELEASOR" refers to Crown Vantage, Inc. and any of its affiliates, subsidiaries, associates, general or limited partners or partnerships, predecessors, successors, or assigns, including, without limitation, any of their respective present or former officers, directors, trustees, employees, agents, attorneys, representatives and shareholders, affiliates, associates, general or limited partners or partnerships, heirs, executors, administrators, predecessors, successors, assigns or insurers acting on behalf of RELEASOR.

"RELEASEE" refers to The Hartford Financial Services Group, Inc. and any of its subsidiaries, affiliates, associates, general or limited partners or partnerships, predecessors, successors, or assigns, including, without limitation, any of their respective present or former officers, directors, trustees, employees, agents, attorneys, representatives and shareholders, affiliates, associates, general or limited partners or partnerships, heirs, executors, administrators, predecessors, successors, assigns or Insurers (collectively, "Hartford").

"AGREEMENT" refers to a certain agreement between Hartford and the Attorney General of the State of Connecticut ("CTAG") and the Attorney General of the State of New York ("NYAG") dated May 10, 2006, relating to an action commenced against Hartford by CTAG dated May 10, 2006, captioned "State of Connecticut against The Hartford Financial Services Group, Inc. and Hartford Life, Inc., and an investigation by CTAG relating to same (collectively, the "Connecticut Complaint"); and an action commenced against Hartford by NYAG dated May 10, 2006, captioned "The People of the State of New York against The Hartford

Financial Services Group, Inc. and Hartford Life, Inc.," and an investigation by NYAG relating to same (collectively, the "New York Complaint").

RELEASE

1. In consideration for the total payment of $1,714,079.38. in accordance with the terms of the AGREEMENT, RELEASOR does hereby fully release, waive and forever discharge RELEASEE from any and all claims, demands, debts, rights, causes of action or liabilities whatsoever, including known and unknown claims, in law, equity or otherwise, whether under state, federal or foreign statutory or common law, and whether possessed or asserted directly, indirectly, derivatively, representatively or in any other capacity (collectively, "Claims", to the extent any such Claims are based upon, arise out of or relate to, in whole or in part, any of the allegations, acts, omissions, transactions, events, or matters discussed in the AGREEMENT; in the Connecticut or New York Complaints, or that are the subject of the Attorneys General's investigations (as that term is defined in the AGREEMENT), and occurring up to the date of the AGREEMENT.

2. In the event that the total payment referred to in paragraph 1 is not made for any reason, then this RELEASE shall be deemed null and void, provided that any payments received by RELEASOR shall be credited to Hartford in connection with any Claims that RELEASOR may assert against Hartford; or that are asserted on behalf of RELEASOR or by a class of which RELEASOR is a member, against Hartford.

3. This RELEASE may not be changed orally and shall be governed by and interpreted in accordance with the laws of the State of Connecticut, without regard to conflict of law principles, except to the extent that federal law requires that federal law governs. Any disputes arising out of or related to

this RELEASE shall be subject to the exclusive jurisdiction of the superior court for the judicial district of Hartford or, to the extent federal jurisdiction exists, the United States District Court for the District of Connecticut.

4. RELEASOR represents and warrants that the Claims have not been sold, assigned or hypothecated in whole or in part.

Dated: _____

RELEASOR: _____

By: _____

Print Name: _____

Title: _____

An Agreement between the Attorney General of the State of Connecticut, the Attorney General of the State of New York ("The Attorneys General") and The Hartford Financial Services Group, Inc. and Hartford Life, Inc. ("The Hartford")

NOTICE OF SETTLEMENT INFORMATION

1. WHAT IS THIS SETTLEMENT ABOUT?

The Attorneys General conducted an investigation (the "investigation") of The Hartford's practices in the marketing, sale or placement of terminal and maturity funding single premium group annuity contracts to pension plan sponsors. These products primarily involve the use of annuities from The Hartford to satisfy all or a portion of a terminating pension plan's liabilities to its employees. The Attorneys General alleged that The Hartford unlawfully:

a. Attempted to steer terminal and maturity funding group annuity business to The Hartford by offering expense reimbursement payments and incen-

tive compensation to certain brokers that specialized in the placement of terminal and maturity funding group annunities; and

b. Withheld information regarding the full amount of compensation paid to certain brokers that specialized in the placement of terminal and maturity funding group annuities.

On May 10, 2006, without either admitting or denying the Attorneys General's allegations, The Hartford and the Attorneys General entered into a settlement agreement (the "Agreement"). In resolving the Investigation, The Hartford acknowledged that it disclosed to plan sponsors the amount of standard commission, but not additional incentive compensation, it paid to brokers in connection with the sale of terminal and maturity funding group annuities. The Hartford voluntarily eliminated all incentive compensation arrangements with terminal and maturity funding brokers in 2004.

2. WHO IS INCLUDED?

The Agreement provides that "Eligible Customers" are entitled to receive monetary relief from The Hartford. Eligible Customers are those pension plan sponsors that:

a. Purchased Hartford's terminal and maturity funding group annuities during the period from January 1, 1998 through December 31, 2004;

b. Used either Brentwood Asset Advisors, LLC, or USI Consulting Group, or Dietrich & Associates, or BCG Terminal Funding Company, or those brokers' or consultants' predecessors, as their broker or consultant, and

c. At the time of the sale, the broker or consultant had an expense reimbursement or other production-based incentive agreement, including but not

limited to a consulting agreement or marketing allowance agreement, with the Hartford and (i) the sale resulted in a payment to the broker or consultant pursuant to the expense reimbursement or other production-based incentive agreement, or (ii) an amount reflecting the payment for an expense reimbursement or other production-based incentive agreement was added to the premium but not otherwise paid to the broker or consultant or (iii) the sale was credited toward achieving a threshold to obtain such payment under such an agreement.

3. WHAT ARE THE BENEFITS OF THE SETTLEMENT?

The Agreement provides the following monetary relief to Eligible Customers:

a. The Hartford agrees to pay $16.1 million into a settlement fund (the "Fund").

b. Eligible Customers that elect to participate in the Fund will receive a pro rata share of the Fund. Each Eligible Customer's pro rata share is determined by dividing that Eligible Customer's total paid premium for Eligible Annuities by the total paid premium for all Eligible Annuities, and then by applying that ratio to the total amount in the Fund.

c. Should any Eligible Customer decline to participate in the Fund, the amount that that customer was eligible to receive may be used by The Hartford in limited circumstances to satisfy any pending or other claims asserted by non-participating customers relating to the Attorneys General's allegations.

d. Should any money remain in the Fund as of January 6, 2007, any such funds will be distributed, on a pro rata basis, among those Eligible Customers that have elected to participate in the Fund.

4. HOW DO I RECEIVE PAYMENT?

Eligible Customers who chose to participate in the Fund must sign a release in the form enclosed and return it to The Hartford before November 7, 2006. Distributions from the Fund will be made to participating Eligible Customers on or about November 22, 2006.

In re Crown Vantage, Inc.
In re Crown Paper Co.

Case No. 00-41584 N (Jointly Administered)

EXHIBIT 2

TO

MOTION TO APPLY SETTLEMENT PROCEEDS AS GENERAL FUNDS

McDermott
Will& Emery
Boston Brussels Chicago
Dosseldorf London Los Angeles
Miami Munich New York Orange
County Rome San Diego Silicon
Valley Washington, D.C.

David E. Rogers
Attorney at Law
drogers@mwe.com
202.756.8307

October 17, 2006

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Lorraine Szymkowicz
Institutional Investment Products
Hartford Life Insurance Companies
200 Hopmeadow Street C1-E
Simsbury, CT 06089

Re: Hartford Settlement Release Form
GA #20341

Dear Ms. Szymkowicz:

On behalf of Jeffrey H. Beck, Trustee to the Crown Paper Liquidating Trust, please find enclosed the release form necessary to participate in the settlement fund.

Please do not hesitate to contact me should you have any questions regarding this matter.

Sincerely,

/s/ David E. Rogers
DAVID E. ROGERS

cc: Jeffrey H. Beck

RELEASE

This RELEASE (the "Release") is executed this 6 day of October, 2006 by RELEASOR (defined below) in favor of RELEASEE (defined below).

DEFINITIONS

"RELEASOR" refers to Crown Vantage, Inc. and any of its affiliates, subsidiaries, associates, general or limited partners or partnerships, predecessors, successors, or assigns, including, without limitation, any of their respective present or former officers, directors, trustees, employees, agents, attorneys, representatives and shareholders, affiliates, associates, general or limited partners or partnerships, heirs, executors, administrators, predecessors, successors, assigns a insurers acting on behalf of RELEASOR.

"RELEASEE" refers to The Hartford Financial Services Group, Inc. and any of its subsidiaries, affiliates, associates, general or limited partners or partnerships, predecessors, successors, or assigns, including, without limitation, any of their respective present or former officers, directors, trustees, employees, agents, attorneys, representatives and shareholders, affiliates, associates, general or limited partners or partnerships, heirs, executors, administrators, predecessors, successors, assigns or insurers (collectively, "Hartford").

"AGREEMENT" refers to a certain agreement between Hartford and the Attorney General of the State of Connecticut ("CTAG") and the Attorney General of the State of New

York ("NYAG") dated May 10, 2006, relating to an action commenced against Hartford by CTAG dated May 10, 2006, captioned "State of Connecticut against The Hartford Financial Services Group, Inc. and Hartford Life, Inc., and an Investigation by CTAG relating to same (collectively, the "Connecticut Complaint"); and an action commenced against Hartford by NYAG dated May 10, 2006, captioned "The People of the State of New York against The Hartford Financial Services Group, Inc. and Hartford Life, Inc.," and an Investigation by NYAG relating to same (collectively, the "New York Complaint").

RELEASE

1. In consideration for the total payment of $1,714,079.38 in accordance with the terms of the AGREEMENT, RELEASOR does hereby fully release, waive and forever discharge RELEASEE from any and all claims, demands, debts, rights. causes of action or liabilities whatsoever, including known and unknown claims, in law, equity or otherwise, whether under state, federal or foreign statutory or common law, and whether possessed or asserted directly, indirectly, derivatively, representatively or in any other capacity (collectively, "Claims"), to the extent any such Claims are based upon, arise out of or relate to, in whole or in part, any of the allegations, acts, omissions, transactions, events, or matters discussed in the AGREEMENT, in the Connecticut or New York Complaints, or that are the subject of the Attorneys General's Investigations (as that term is defined in the AGREEMENT), and occurring up to the date of the AGREEMENT.

2. In the event that the total payment referred to in paragraph 1 is not made for any reason, then this RELEASE shall be deemed null and void, provided that any payments received by RELEASOR shall be credited to Hartford in connection with any Claims that RELEASOR may assert against Hartford; or that are asserted on behalf of RE-

LEASOR or by a class of which RELEASOR is a member, against Hartford.

3. This RELEASE may not be changed orally and shall be governed by and interpreted in accordance with the laws of the State of Connecticut without regard to conflict of taw principles, except to the extent that federal law requires that federal law governs. Any disputes arising out of or related to this RELEASE shall be subject to the exclusive jurisdiction of the superior court for the judicial district of Hartford or, to the extent federal jurisdiction exists, the United States District Court for the District of Connecticut.

4. RELEASOR represents and warrants that the Claims have not been sold, assigned or hypothecated in whole or in part.

Dated: October 6, 2006

RELEASOR: Crown Paper Liquidating Trust, as successor to Crown Paper Company and Crown Vantage, Inc.

By: Jeffrey H. Beck, Trustee

Print Name: Jeffrey H. Beck, Trustee

Title: Trustee

APPENDIX B

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

No. 00-41584N

In re CROWN VANTAGE, INC., CROWN PAPER, INC.,
Debtors,

Chapter 11
Jointly Administered
Employer I.D. No. 54-1752384

Date and time to be determined
Place: Courtroom of Hon. Randall J. Newsome

OBJECTION TO MOTION TO APPLY SETTLEMENT PROCEEDS AS GENERAL FUNDS; REQUEST FOR HEARING

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I. INTRODUCTION

1. This Objection and Request for Hearing[1] is hereby made in response to the Motion to Apply Settlement Proceeds as General Funds brought by Jeffrey H. Beck, Liquidating Trustee of the Crown Paper Liquidating Trust. This Objection and Request for Hearing is made by the Plaintiffs in the related Adversary Proceeding No. 01-4375-AN, which is subject to a pending petition for certiorari in the Supreme Court that involves certain issues presented by the instant motion. These Objectors, PACE International Union[2] and two individual members and pension plan participants,[3] prevailed in the Ninth Circuit, which affirmed the holding of this Court that "surplus" pension plan assets could not revert to the estate under the facts of that case, but instead must go to participants.[4] The same reasoning applies to the $1,714,079.38 received from Hartford Insurance Company based on the pension plan's purchase of annuities while victim of Hartford's scheme of "secret kickbacks" to brokers in the pension annuity business. The Motion should be denied, and the sum received paid over to the Crown Vantage pension account forthwith. This sum will help replenish the

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[1] Together with the concurrently filed Declaration of Christian L. Raisner in Support of Objection to Motion to Apply Settlement Proceeds As General Funds and exhibits thereto.

[2] PACE International Union recently merged with the United Steelworkers of America and other industrial unions. The merged union is called "USW." For consistency in this bankruptcy case, however, we will continue to refer to "PACE" or "the Union."

[3] As captioned in Adversary No. 01-4375-AN, Plaintiffs are PACE International Union on behalf of members and former member participants in pension plans sponsored by the Debtors; Edward J, Miller, Jeffrey D. Macek on behalf of themselves and others similarly situated. All of those Plaintiffs are referred to collectively herein as "PACE."

[4] *Beck v. PACE Intl. Union*, 427 F.3d 668 (9th Cir. 2005); *see also Beck v. PACE Intl. Union*, 146 Fed. Appx. 917.

$1.8+ million transferred from the pension account to Hartford to cover pension liabilities that the annuity contracts failed to include. [Docket 1656] The facts and law found by this Court have been affirmed by the Ninth Circuit and identify the sums transferred originally to Hartford were plan assets. *Beck v. PACE International Union*, 427 F.3d 668 (9th Cir. 2005). Recovery based on those assets consists of plan assets as well.

2. The settlement sum at issue of approximately $1.7 million comes from a settlement of suits brought by attorneys general for Connecticut and New York alleging "secret kickbacks" by Hartford Insurance Company for the steering of annuity business to them. Among the annuity business steered to Hartford was some $85 million in pension assets of the merged Crown Vantage retirement plan. The settlement sum is the share accorded the $85 million, based on a formula to distribute $16.1 million "directly to the pension plans harmed by the scheme," Decl. Raisner Exhibit C (Attorney General website).

3. This Court held in related Adversary Proceeding No. 01-4375 AN, on December 11, 2001, that surplus pension assets would not revert to the plan sponsor, and entered an order in February 2002 establishing a remedy negotiated by the parties to distribute of the surplus to participants after meeting certain ERISA plan termination requirements. On November 5, 2003, Crown was granted leave to pay an additional annuity premium to Hartford in order to include pension benefits not originally covered by the annuity contract. This reduced the remaining surplus by more than $1.8 million, substantially reducing amounts available to return contributions and to pay new benefits to participants. Beck is the successor to the Crown Vantage Board of Directors as both sponsor and plan administrator of the Crown Vantage Pension Plan. The entire amount of the funds used to purchase the annuities from Hartford consisted of pension

assets. The settlement proceeds should be returned to the pension plan, which is the sole source of the $85 million leading to the settlement recovery.

4. It appears that Beck never informed the Supreme Court of the information disclosed in this motion. As a result, no briefing has occurred on the issues on the petition for certiorari. No record appears that any party or any government agency was informed. Beck had plenty of time to disclose these new developments which he knew about well before filing his reply in the Supreme Court on August 8, 2006. *See* Decl. Raisner Exhibit A. On October 2, 2006, the Solicitor General was invited to file a brief expressing the views of the United States. His brief, filed December 22, 2006, the day after this Motion was filed. The Department of Labor and the Pension Benefit Guaranty Corporation are on that brief, which also did not address this issues presented in the motion. *See* Decl. Raisner ¶ 3.

5. PACE therefore objects to Beck's Motion and requests a hearing. However, Beck's petition for certiorari pending in the Supreme Court, Docket No. 05-1448, involves issues that control this matter to a large extent. Unless and until the Supreme Court or an appellate court orders otherwise, surplus pension assets in this case cannot go to Beck or the estate or be applied as general funds. To permit the Hartford settlement proceeds to be applied as general funds would contradict the Ninth Circuit's opinion that Beck has asked the Supreme Court to review.

II. THE HARTFORD SETTLEMENT FUND

6. On July 10, 2006 an officer of The Hartford Financial Services Group, Inc. wrote to Beck describing a settlement reached with attorneys general of Connecticut and New York. The letter stated:

> Specifically, your purchase of group annuity contract(s) GA 20341 for which you paid $85,924,700.00 in pre-

> mium, entitles you to receive at least $1,714,079.38 from the [settlement] Fund.

Exhibit 1 to Beck's Motion to Apply Proceeds as General Funds. The money used to purchase the annuities consisted of pension plan assets drawn from pension fund accounts. "Crown signed an agreement to deposit over 84 million dollars in plan assets with Hartford." *Transcript of Proceedings, December 11, 2001, Adversary No. 01-4375-AN at 12:8-9*; Decl. Raisner Exhibit F at 12:8-9.

7. Pension plans were intended to be the direct beneficiaries of the Hartford Settlement. The official website of the Connecticut Attorney General states:

> The settlement will provide $16.1 million directly to the pension plans harmed by the scheme and $1.95 million in penalties each to Connecticut and New York. Under these agreements, The Hartford secretly paid brokers millions of dollars in exchange for brokers steering pension plan purchases of annuities, and providing inside information on competitive bidding.

Decl. Raisner Exhibit C (emphasis supplied).

8. The Settlement Agreement dated May 10, 2006, between Hartford and the Attorneys General describes the "Terminal/Maturity Funding Group Annuity Fund," set up "to be paid to Hartford's pension plan customers that purchased Hartford's Terminal/Maturity Funding Group Annuity(ies)" during 1998-2004, and using specified brokers, including Dietrich & Associates, the broker who recommended Hartford to the Crown Vantage Board of Trustees. See Decl. Raisner Exhibit E ¶ 1 at pp. 2-3.

9. The amount of settlement funds to be paid to particular "Eligible Customers" was based on calculations expressly taking into account the amount of pension assets used to purchase annuities, in particular:

> . . . (iii) the amount of the Eligible Customer paid in premiums for each Eligible Annuity; and (iv) the amount each Eligible Customer is eligible to receive from the Terminal/Maturity Funding Group Annuity Fund, which shall equal each Eligible Customer's pro rata share of the Terminal/Maturity Funding Group Annuity Fund **as calculated by the ratio of the Eligible Customer's total paid premium for Eligible Annuity(ies), divided by the total paid premium for all Eligible Annuities. . . .**

Decl. Raisner Exhibit E ¶ 3 at p. 4 (emphasis supplied).

10. Beck did not disclose the Hartford Settlement until filing the instant Motion December 21, 2006. Only then did he disclose his position that the Crown Vantage Pension Plan "does not have any interest in such funds." Beck Motion ¶ 15 at 4:18. The timing of Beck's revelation prevented briefing on this matter in the Supreme Court, where it is plainly germane to the pending petition for certiorari, which concerns, among other things, the application of ERISA fiduciary standards to plan sponsors in relation to plan assets in termination and other situations. See Decl. Raisner Exhibit B-1 at i-iv, B-2 at (i)-iv in Supreme Court. The facts concerning the Hartford settlement payout substantially impact the issues presented on the petition for certiorari.

III. BACKGROUND OF RELATED ADVERSARY PROCEEDING

11. The related adversary proceeding provided essential background. On November 15, 2001, PACE and two individual participants filed Adversary Proceeding Adversary No. 01-4375-AN and on November 19, 2001, filed their First Amended Complaint. On November 29, 2001, the Court held an all-day hearing on the Plaintiffs' request for a preliminary injunction, which was granted on December 11, 2001. *See* Transcript, Decl. Raisner Exhibit F. On February 4, 2002, at the Court's direction, the parties filed a "Joint Report" con-

taining a stipulation that the Court's Findings of Fact and Conclusions of Law were "final," and suggesting how the surplus assets could be distributed. On February 5, 2002, the Court signed the proposed Order submitted with the Joint Report.

12. On November 5, 2003, the Liquidating Trustee obtained the Court's permission to pay an additional premium to Hartford on the annuity in order to include pension benefits the contract had mistakenly failed to include. Over Plaintiffs' opposition, the Bankruptcy Court permitted defendant to pay the additional premium from pension plan assets. [Docket 1656]

13. In March 2000, Crown filed for Chapter 11 bankruptcy. In August 2001, it was clear that Crown Vantage would soon cease to exist. Crown hired Dietrich & Associates to explore the possibility of purchasing an annuity to cover the benefit liabilities of its pension plans. Dietrich was instructed to find an annuity provider for the ten current plans and for two of the seven frozen plans that were overfunded. Crown cherry-picked the plans to be annuitized, selecting those that could provide a surplus and abandoning the others.

14. At about the time that Crown was hiring Dietrich, a meeting took place between Bob Smith, Regional Vice-Present of PACE, Evan Davis, President and CEO of Crown, and several Crown attorneys. Smith suggested that the PACE Industry Union Management Pension Fund ("PIUMPF") might be willing to take over the Crown pensions, and Crown was interested. PIUMPF sent Crown a detailed proposal, including actuary determination and plan documents. The minutes of the September 26, 2001 meeting of the Crown Board state:

> The Union has offered to take all of the hourly pension plans into PIUMPF, the union multi-employer plan. *This offer will be evaluated in comparison to the annuitization of plans when we receive final bids from the annuity providers*. The final bids are anticipated on October 9, 2001.

Also on September 26, Crown's attorneys asked PIUMPF for certain information, e.g., the latest IRS determination letter, the current investment policy, etc., which PIUMPF sent on October 8.

15. Meanwhile, on October 4, 2001, Crown's attorney promised *in open court* to give PACE notice of any intended action, including a possible merger, and to obtain court approval of any such action.

16. On October 9, Crown received bids of several annuity providers. Meeting that day, Crown's Board of Directors decided to accept the bid of Hartford Life Insurance Co. for approximately $84 million, which would leave about $5 million in the Crown plans. The Crown Board hoped that this sum would revert to Crown Vantage upon the plans' termination.

17. On October 10, without notice to PACE or to the Bankruptcy Court, Crown sent the $84 million to Hartford. This Court noted in its December 11, 2001 Order:

> Thus, as of October 10th, the annuitization of pension plans was a fait accompli, notwithstanding the assurances of notice and Court approval made by counsel for Crown to the Court and counsel for the Union at the October 4th hearing.

18. On October 26, 2001, Crown merged the twelve plans into one and formally decided to terminate it. The Board never examined the documents sent by PIUMPF, and never made a comparison between the PIUMPF plan and annuitization.[5] Dietrich & Associates, whom the Board hired to

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[5] PIUMPF supplied every document requested by Crown, amounting to several hundred pages of material, including plan documents, financial data, and a draft Merger Agreement. On the other hand, Crown never examined or even saw the actual annuity policy to be issued by Hartford, not even a sample annuity policy, before transferring the $84 million.

gather information and give advice about annuities, could have compared the PIUMPF offer to the annuities, but did not do so.

19. The Court found that Crown "gave no serious consideration to the PIUMPF merger proposal." Decl. Raisner Exhibit F 14:1-2. A comparison would have revealed a number of advantages in the PIUMPF proposal. *Id.* at 8. PIUMPF offered a simple, effective method of dispute resolution before a neutral party. Hartford had no system at all. PIUMPF had an established history of increasing benefits and paying bonuses from time to time. Hartford's policy was never to increase benefits. PIUMPF's offer was to accept *all* liabilities of the pension plans. Hartford's offer was to accept only those spelled out in the policy, which were, in fact, less than what had been promised the workers. PIUMPF's offer left no reversion for Crown. Hartford's offer left about $5 million.

20. Crown said it chose Hartford over PIUMPF because PBGC had expressed reservations. In fact, however, the PBGC had *not* expressed any reservations. The PBGC officer in charge of the Crown matter testified that he had not expressed any "reservation" or "concern" about the proposed PIUMPF merger. Decl. Raisner Exhibit F at 13:15-21.

21. As pointed out in the Complaint that led to the Hartford Settlement, "without knowing it, Crown paid twice for the same services" provided by Dietrich in evaluating annuity providers. Decl. Raisner Exhibit D at ¶ 153 at 41.

22. This Court found "serious questions whether the conduct of Crown's officers and Board of Directors was directed more at fulfilling their fiduciary obligations to the creditors of an insolvent corporation than at fulfilling their fiduciary obligations to the corporation's pensioners." Decl. Raisner Exhibit F at 15:21-25. The same finding applies to Beck as he seeks to favor the creditors at the expense of pensioners.

IV. DISCUSSION

A. THE SETTLEMENT FUNDS CONSIST OF PENSION ASSETS, WHICH ARE NOT AVAILABLE TO CREDITORS UNDER THE LIQUIDATION PLAN.

23. Beck's Motion turns upon characterizing the settlement sum as a recovery of monies that are not pension assets, because pension assets must be returned to the Pension account to provide for benefits, plan administration and satisfaction of the judgment issued by this Court. To prevent return of the $1.7 million to the pension fund, Beck makes several assertions that do not hold up and omits any mention at all of controlling documents and history.

24. The Motion, standing alone, would lead one to believe that the $85 million transferred to the Hartford never were pension assets at all, but paid by the sponsor with general assets. In reality, the funds were transferred from the pension plan by the plan administrator, which was at that time the Crown Board of Directors, which served also as Trustee. Decl. Raisner Exhibit F at 21-22. The Motion omits any reference to Beck's present and continuing role as a fiduciary to the pension plan, as plan administrator and plan Trustee, positions acquired by succeeding to the Crown Vantage Board of Directors.

25. As successor to the Crown Board, Beck stands in the position of trustee of the pension plan. As trustee and plan administrator, Beck is not at liberty to direct the assets away from the plan to creditors. What Beck attempts is tantamount to seeking a reversion expressly denied by this Court and the Ninth Circuit in the related adversary proceeding pending where certiorari is pending in the Supreme Court. Only if the Supreme Court could reverse this Court's rulings and permit the settlement sum to be made available to creditors. This follows from the ERISA requirement that the transfer of plan assets when annuities are purchased for plan termination to be made not by the sponsor, but by the plan administrator.

26. The fact that the Crown Board was also the administrator does not mean that the Crown Board acted as plan sponsor and somehow acquired ownership of the pension assets before they were transferred to Hartford for the purchase of annuities. ERISA, as well as the Internal Revenue Code do not contemplate pension assets becoming property of a plan sponsor without all benefit liabilities being satisfied first. *See* ERISA §403(c)(1), 29 U.S.C. § 1103(c)(1) (assets of a plan shall never inure to the benefit of any employer.) *See also* ERISA §§ 4041, 4044, 29 U.S.C. §§ 1104, 1344. Once it is conceded that the annuities were purchased with pension assets rather than with the assets of the sponsor, and further conceded that surplus plan assets have been denied to the plan sponsor by this Court, it follows inexorably that the settlement funds based upon victimization of the pension plan in its purchase of annuities must accrue to the benefit of the pension plan. Such funds are for the exclusive benefit of the participants and beneficiaries and covered by the judgment entered in the related adversary proceeding in No. 01-4375 AN. *See* 29 U. S. C. § 1103; *Resolution Trust Corp. v. Financial Inst. Ret. Fund*, 71 F.3d 1553, 1556-58 (10th Cir. 1995).

1. Beck's Motion Mischaracterizes The Terms Of The Hartford Settlement.

27. The Motion mischaracterizes the Hartford settlement to make it appear that no benefit is intended to pension plans, but only to plan sponsors. To this end, the Motion states: That "the payment was not derived from amount of assets in the Pension Plan No. 7 or any other financial figure directly related [to] the assets in Pension Plan No. 7." Motion ¶ 10 at 3:21-22. This statement is literally untrue, unless the plan assets transferred to the Hartford in October 2001 were not plan assets or somehow deemed to be no longer "in" the pension plan. The assets transferred in fact accounted for all but about $5 million out of more than $89 million that was in

the plan. The Motion goes on to speak of a computation of Hartford:

> . . . it was calculated by Hartford using a formula in the Hartford Agreement involving the sale of annuities where, at the time of the sale, a production based incentive agreement was in place and result in either a payment to a broker or consultant, or other related criteria.

Motion ¶ 10 at 3:22-26.

28. The reality of the formula used in the Hartford Agreement was to first consider the amount "paid in premiums for each Eligible Annuity," then to use that number to determine the pro rata share of the total settlement fund, as clearly stated in the Agreement itself. See Decl. Raisner, Exhibit E, ¶ 3(b)(iii)-(iv) at p. 4. The Motion then states without any supporting documentation, that "Hartford would not pay any funds to retirement plans; rather it would pay only to plan sponsors." Motion ¶ 11 at 4:1-2. This statement cannot be squared with the Agreement itself and it contradicts the statements of the Attorneys General on the Connecticut Attorney General website, Decl. Raisner Exhibit C.

29. In any event, it is not Hartford's prerogative to determine how the settlement funds are to be characterized. The funds were paid over by the plan administrator and should be returned thence (*i.e.*, to Beck), the plan fiduciary. But Beck does not have discretion to pay the money to creditors of the Liquidating Trust. Nor does Hartford have a say as to that matter. The absence of any documentation on this point, or any citation to legal authority shows weakness in Beck's position, which is not tenable. Statements concerning what Hartford "has indicated to counsel" about how it "considers" the settlement to involve only the claims of Plan Sponsors Motion ¶ 11 at 3:27-28, are hearsay statements of an anonymous person, not within any exception to the hearsay rule, and merely speculative.

30. Beck then asserts that he "believes" that the settlement funds are "cash proceeds from the disposition of the Trustee's right of recovery under a settlement between Hartford and Crown as sponsor of Pension Plan No. 7," Motion ¶ 12 at 4:3-6. However, there is no settlement between Hartford and Crown at all, only a release form that Beck signed on October 6, 2006, a document that cannot reasonably be construed as affecting a settlement of any kind between the Hartford and plan sponsor. The fact that a plan sponsor decided that annuities should be purchased with plan assets does not provide the plan sponsor or plan trustee with a right to keep funds recovered by state attorneys general and paid out on the basis of pro rata amounts of plan assets used to purchase annuities. Among other things, it would violate the prohibited transaction rule of ERISA § 406, 29 U.S.C. § 1106. It would also show a violation of ERISA general fiduciary duties under ERISA §404, 29 U.S.C. § 1104.

31. The assertion that the settlement proceeds results from a settlement between Hartford and Crown is not reasonable or credible. The Motion's references the Liquidating Plan of Reorganization and rights created there as if they were superior to duties established under ERISA, However, the Liquidating Plan of Reorganization could not extinguish ERISA rights. Therefore, it is beside the point that the Motion contends that pre-petition lenders with class two claims "are entitled to participate in their appropriate share," of the proceeds. Motion ¶ 13 at 4:8-9. The trustee asserts his own belief as a basis of entitlement to the settlement sum, but such belief will not suffice: It is not credible for the trustee to state that he "further believes that Pension Plan No. 7 does not have any interest in such funds" Motion ¶ 15 at 4:18. It cannot be news to the trustee that a recovery from the expenditure of pension assets should accrue to the benefit of a pension plan. The trustee's difficulties as successor to the Crown Board cannot blind him to the legal issues litigated for

years in this Court, the District Court, the Ninth Circuit, and now in the Supreme Court.

2. The Settlement Is Intended To Directly Benefit The Pension Plan, Not The Creditors.

32. Settlement is not intended to benefit the creditors. The Trustee's position cannot be squared with the views of the Connecticut Attorney General, who makes the following unequivocal statement on his official web site:

> The settlement will provide $16.1 million directly to the pension plans harmed by the scheme . . . Under these agreements, The Hartford secretly paid brokers millions of dollars in exchange for brokers steering pension plan purchases of annuities, and providing inside information on competitive bidding.

The Decl. Raisner Exhibit C (emphasis supplied). In contrast to the Attorneys General who entered this settlement with Hartford, Beck seeks to deny all recovery to the pension plan. Instead the motion proposes that pre-petition lenders, rather than anyone harmed by the annuity purchase, receive the benefit of The Hartford settlement with the Attorneys General. That is not what the settlement was intended to do.

3. The Liquidating Plan Of Reorganization Did Not Create A Claim To The Settlement Proceeds On The Part Of The Liquidating Trust.

33. Beck's motion seeks shelter in the Crown Liquidating Plan of Reorganization and refers to §7.3 thereof providing that "the Debtors' assets vested automatically in and were transferred to" the Liquidating Plan of Reorganization could take no plan assets and does not purport to. Indeed, the disclosure statement contains certain amendments that would conflict with a disregard for continuing plan sponsor functions. See Decl. Raisner Exhibit G.

4. Settlement Funds Were The Result Of The Annuity Purchased By The Plan And A Remedy For Wrong-doing By The Hartford In The Annuity Purchase Transaction.

34. Such recoveries are properly returned to the party that made the expenditure that was invested with the harm to be prevented, namely the pension plan. No sponsor funds were expended or lost in the process, and Beck's Motion does not attempt to allege that such was the case. Instead, Beck's claim to The Hartford settlement funds appears to rely on a sleight of hand technique in which pension assets are paid out from the pension plan but recovery intended for the pension plan is routed to the plan sponsor instead. No legal or contractual basis exists for characterizing the Hartford fund recovery as assets not belonging to the pension plan.

B. BECK'S ERISA DUTIES AS PLAN TRUSTEE AND PLAN ADMINISTRATOR REQUIRE HIM TO DEAL WITH ALL PLAN ASSETS WITH AN EYE SINGLE TO THE INTERESTS OF PENSION PARTICIPANTS AND BENEFICIARIES.

35. A central issue in the related adversary proceeding No. 01-4375-AN in this Court as well as in the Court of Appeals has been the duty of pension plan fiduciaries to act "with an eye single" to the interest of pension plan participants and beneficiaries. *Donovan v. Bierwirth*, 680 F.2d 263, 271 (2d Cir. 1982), quoted in *Pilkington PLC v. Perelman*, 73 F.3d 1396 (9th Cir. 1995). That adversary proceeding concerned fiduciary breaches of the Crown Board of Trustees, which violated its fiduciary obligations in implementing the plan termination. Beck has elected to defend those acts of the Crown Board. But here Beck himself has violated the central ERISA fiduciary precept. The positions of plan trustee and plan administrator are filled by Beck as successor to the Crown Vantage Board of Trustees. *See PBGC v. Pritchard Mfg. Co., (In re Esco)*, 33 F.3d 509 (5th Cir. 1994), *rehearing*

50 F.3d 315 (5th Cir. 1995) (Trustee steps into shoes of a administrator). In those positions of responsibility, Beck must be guided by the strict ERISA rule that plan assets are held in trust with the interest of the participants and beneficiaries whose interest he must serve exclusively when it comes to plan assets.

36. In bringing this Motion Beck seeks some shelter, perhaps in part because of tax implications, see Motion ¶ 15 at 4:19-20 ("Internal Revenue Service And/Or Other Parties Might Have An Objection"). Indeed, the taking of any of the pension assets as a reversion would be taxed at a high rate designed to discourage termination in order to accomplish reversion.

C. BECK'S SECRECY CONCERNING THE HARTFORD SETTLEMENT SHOWS UNCLEAN HANDS AND PRECLUDES HIM FROM KEEPING THE SETTLEMENT FOR THE BENEFIT OF CREDITORS.

37. The Motion, far from the "full disclosure" asserted, Motion 15, shows instead a calculated effort to hide $1.7 million from the pension plan. It is disturbing that Beck has failed to this day to mention the Hartford settlement in the related adversary proceeding or even reveal this new event to the Supreme Court. Apparently, the litigation approach was to keep quiet until the time for briefing had passed in the Supreme Court Petition for Certiorari proceeding.

38. The settlement funds could only be available to creditors if this Court's judgment was reversed on the merits by the Supreme Court. While Beck has acted to secure the settlement proceeds for creditors of the estate, the law has not changed in his favor. ERISA still controls the conduct of plan fiduciaries toward plan assets and administration.

V. CONCLUSION

For the reasons stated above, the undersigned requests on behalf of PACE and former member participants in Crown

Vantage pension plans, Edward J. Miller, Jeffrey D. Macek and others similarly situated, Plaintiffs in related Adversary No. 01-4375-AN, that Beck's motion be denied, that a hearing be scheduled and that an opportunity to discover facts and present evidence and further argument be afforded these Objectors.

Dated: Respectfully submitted,

WEINBERG, ROGER & ROSENFELD
A Professional Corporation
By: /s/ Christian L. Raisner
CHRISTIAN L. RAISNER
Attorney for Creditor/Plaintiffs
PACE International Union

U.S. Bankruptcy Court
Northern District of California (Oakland)

[Filed 03/15/2000]

Bankruptcy Petition #: 00-41584

Debtor CROWN VANTAGE, INC., CROWN PAPER, INC.,

Filing Date	#	Docket Text
01/10/2007	1804	Objection To Motion to Apply Settlement Proceeds as General Funds; Request for Hearing (RE: related document(s) 1802 Notice). Filed by Creditors Jeffrey D. Macek, Edward J. Miller, PACE International Union (Attachments: # 1 Declaration of Christian L. Raisner In Support of Objection to Motion to Apply Settlement Proceeds as General Funds; Request for Hearing # 2 Exhibit A, B-1 and B-2 to Declaration of Christian L. Raisner# 3 Exhibit B-3, B-4 and C to Declaration of Christian L. Raisner # 4 Exhibit D to Declaration of Christian L. Raisner # 5 Exhibit E and F to Declaration of Christian L. Raisner # 6 Exhibit F to Declaration of Christian L. Raisner) (Raisner, Christian) (Entered: 01/10/2007)

12/22/2006	1803	Certificate of Service (RE: related document(s) 1801 Motion Miscellaneous Relief, 1802 Notice). (Law, Kenneth) (Entered: 12/22/2006)
12/21/2006	1802	Notice Regarding Motion to Apply Settlement Proceeds as General Funds and Opportunity for Hearing (RE: related document(s) 1801 Motion to Apply Settlement Proceeds as General Funds and Opportunity for Hearing Filed by Trustee Other Prof Jeffrey H. Beck (Attachments: # (1) Exhibit 1 # (2) Exhibit 2) (Law, Kenneth)). Filed by Trustee Other Prof Jeffrey H. Beck (Law, Kenneth) (Entered: 12/21/2006)
12/21/2006	1801	Motion to Apply Settlement Proceeds as General Funds and Opportunity for Hearing Filed by Trustee Other Prof Jeffrey H. Beck (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Law, Kenneth) (Entered: 12/21/2006)

APPENDIX C

STATE OF CONNECTICUT
ATTORNEY GENERAL'S OFFICE

Connecticut Attorney General's Office

Press Release

Attorney General Announces $20 Million Settlement With The Hartford Involving Secret Kickback Allegations

May 10, 2006

Attorney General Richard Blumenthal today announced that The Hartford Financial Services Group, Inc. (The Hartford) will pay $20 million under an agreement with Connecticut and New York to settle allegations that it paid brokers millions of dollars in secret kickbacks in exchange for steering lucrative pension plan investment business to The Hartford.

The Hartford is one of the oldest and largest investment and insurance companies in the country, with millions of customers worldwide. The settlement will provide $16.1 million directly to the pension plans harmed by the scheme and $1.95 million in penalties each to Connecticut and New York.

From 1998 through 2004, The Hartford entered into concealed financial agreements with brokers, including Dietrich & Associates, Inc. (Dietrich), Brentwood Asset Advisors (Brentwood), Glastonbury-based USI Consulting Group, and BCG Terminal Funding.

Under these agreements, The Hartford secretly paid brokers millions of dollars in exchange for brokers steering pension plan purchases of annuities, and providing inside information on competitive bidding.

"The Hartford was at the hub of a series of secret conspiracies that enriched both the brokers and The Hartford at the expense of their customers," Blumenthal said. "Our evidence shows a shocking systematic scheme that betrayed their moral and legal duties."

The settlement involves one line of business - terminal and maturity funding group annuities. Terminal funding agreements are annuities purchased by pension plans when the plan is being terminated or frozen due to the dissolution or restructuring of a company. Maturity funding agreements are used by ongoing pension plans to fund future retirement obligations for employees.

"The Hartford paid secret kickbacks to brokers who steered pension plan business and undercut the competitive bidding process—raising the pension plan's costs," Blumenthal said. "The Hartford and its co-conspirators elaborately concealed kickbacks as so-called expense reimbursement agreements—really just false fronts for the scheme. The scheme exploited pension plans - taking funds from retirement vehicles that are the bedrock of our nation's workers' livelihoods.

"There is no pleasure in uncovering wrongdoing by one of Connecticut's best respected corporate citizens. Our continuing investigation of The Hartford and others must be pursued wherever the evidence leads. The Hartford has cooperated—taking the high road—and we hope others will as well. The message is that no one in this industry—insurers or brokers, big or small—can break the law and betray their trust.

"Our reforms—stopping contingent commission agreements—will help prevent future insurance abuses. This investigation was spurred by a whistleblower and we hope others with knowledge will come forward."

Blumenthal said this settlement culminates a year-long investigation conducted jointly with the New York Attorney General's office. Blumenthal said The Hartford cooperated with the investigation.

Department of Consumer Protection Commissioner Edwin R. Rodriguez said, "This settlement is part of an ongoing process to bring transparency to the insurance industry. The message is that the consumer needs to be dealt with honestly and fairly—and not with the kind of backdoor steering and undisclosed compensation to third parties that occurred here. I hope all insurance companies will take note that this kind of anti-consumer behavior will be dealt with to the full extent of the law."

Blumenthal said The Hartford—unknown to pension plan sponsors—paid tens of thousands of dollars, and in some cases hundreds of thousands of dollars of these secret payments to brokers. The cost of these payments were built into sponsors' annuity purchases.

For example, Crown Vantage, Inc. paid its broker, Dietrich, a $168,287 fee for its services in helping it purchase an annuity for its pension plan. Unknown to Crown Vantage, The Hartford also paid the broker a $841,437 secret payment for bringing the business to The Hartford.

Similarly, Brentwood received a disclosed commission of $150,918 for placing Tenet Health System's pension plan with The Hartford. However, The Hartford and Brentwood failed to disclose a back-end payment of $238,983 to Brentwood for delivering the business to The Hartford. G.E. Consumer Finance in Stamford and Kuehne & Nagel in Hamden were also victimized by the scheme.

These secret agreements—dubbed "expense reimbursement agreements," "ERAs," or "consulting agreements"—claimed to reimburse brokers for expenses related to placing an annuity with The Hartford.

In reality, these arrangements were shams used to pay kickbacks in return for steering business to The Hartford so that The Hartford could increase its share of the market. Or, as described in an email by an employee of The Hartford,

ERAs are "used to stimulate business that we otherwise would not get."

In order to receive these secret payments, The Hartford's ERAs required brokers to meet predetermined volume thresholds. For example, under Dietrich's 2003 agreement, if Dietrich placed less than $5 million of premium in a three-month period, its maximum quarterly ERA reimbursement would be $37,500. Under the same agreement, if Dietrich placed over $15 million in a quarter, its maximum quarterly reimbursement would jump to $375,000.

The Hartford also conditioned its undisclosed payments on brokers delivering "quality" business—or business that allowed The Hartford to obtain "adequate" profit margins. This practice discouraged brokers from negotiating too hard against The Hartford, and saddled brokers with a significant conflict of interest.

Under the ERAs, brokers also provided The Hartford with inside intelligence on bidding held for the purchase of the annuities, which gave The Hartford an advantage over its competitors.

For example, The Hartford paid Brentwood an undisclosed $100,000 for providing inside information that landed The Hartford the PricewaterhouseCoopers' $500 million pension plan annuity purchase. An email by an employee at The Hartford recounted that the Brentwood provided "The Hartford with the details of the bidding process and competitors' bids on [the] final day . . ."

In exchange for secret payment schemes over the years, The Hartford captured upwards of $800 million worth of business, reaping millions more in investment profits. Brokers received close to $4 million in concealed payments that were unknowingly subsidized by their pension plan clients.

As one executive of The Hartford said in an internal email, "distribution partnerships" worked because the brokers "like our money."

Under this settlement, The Hartford has also agreed to cooperate with the attorneys general in their continuing investigation of the insurance industry.

Blumenthal thanked those in his office who worked on the investigation—Assistant Attorneys General Rachel Davis and Mark Kohler, Paralegal Lorraine Measer, Chief Information Officer Evelyn Godbout, and legal intern Danielle Suchcicki, under the direction of Assistant Attorney General Michael Cole, Chief of the Attorney General's Antitrust Department.

APPENDIX D

SUPERIOR COURT
JUDICIAL DISTRICT OF HARTFORD

STATE OF CONNECTICUT,
Plaintiff,

v.

THE HARTFORD FINANCIAL SERVICES GROUP, INC.;
and HARTFORD LIFE, INC.,
Defendants.

May 10, 2006
Return Date: May 23, 2006

COMPLAINT

I. SUMMARY OF THE CASE

1. This action seeks redress for a scheme perpetrated by The Hartford Financial Services Group, Inc. and Hartford Life, Inc. (collectively, "The Hartford") to secretly and systematically induce brokers to steer their clients—pension plan sponsors and fiduciaries—to purchase single premium group annuities from The Hartford. To ensure the success of the scheme, The Hartford funneled tens of thousands of dollars, and in some cases hundreds of thousands of dollars, of secret payments that were, unknown to the pension plan sponsor, built into the cost of their annuity.

2. Every year over a billion dollars of retirement plan assets are invested in single premium group annuities by pension plan sponsors, including Fortune 500 companies, small businesses, healthcare systems and hospitals, public education systems, and other entities. The annuities are purchased and used to satisfy accrued pension liabilities for

both ongoing defined-benefit pension plans or frozen defined-benefit pension plans when those plans are terminated or restructured. Competition for these investment plan asset dollars among insurance companies is fierce, with many insurers competing for the relatively small number of plans that will purchase these annuities annually. Moreover, the market for group annuities shows no sign of abating, as several large companies, including I.B.M., Verizon, Hewlett-Packard, Motorola and Sears have all recently announced that they have frozen their pension plans for many employees.

3. Due to the complexities associated with a pension plan's administrative requirements and legal obligations, the plan sponsor's fiduciary obligations to the plan, and the intricacies of evaluating and selecting an appropriate annuity, many plan sponsors and fiduciaries turn to the services of an experienced pension broker to guide and navigate the plan through the myriad steps necessary to successfully make the right annuity choice. Oftentimes the process of purchasing an annuity requires a broker to arrange for and conduct a course of preliminary and final bidding among the competing insurers. At the conclusion of the bidding the broker will most often provide the plan with a written recommendation regarding the most appropriate annuity for the plan to purchase.

4. Beginning at least as early as 1998, The Hartford conceived of a scheme to preserve and increase its share of the market for single premium group annuities by secretly compensating selected brokers in return for the brokers steering their plan clients to The Hartford for the purchase of single premium group annuities. The Hartford devised what became known as Expense Reimbursement Agreements, and later consulting agreements, which purported to reimburse the brokers for expenses they incurred in placing an annuity with The Hartford, or reimbursed the broker for alleged services they provided The Hartford. In reality, as confirmed in an internal The Hartford email, these financial arrangements

were intended "to change[ ] the buying habit of the intermediary . . . that is what we are trying to accomplish." In essence, then, the agreements were nothing more then sham arrangements, utilized to provide the appearance of legitimacy to what was, in effect, a furtive plan to pay undisclosed sums to the brokers in return for the brokers steering an increasing volume of "profitable" business to The Hartford, and providing The Hartford with "last looks" and inside intelligence on the bidding, which ultimately gave The Hartford an advantage that was not otherwise available to the other competing insurers.

5. Thus, while the brokers held themselves out as the plan's "expert" consultant and "fiduciary", they were secretly working to ensure that The Hartford would be selected as the annuity provider in order that the broker could achieve additional undisclosed compensation. In a 2003 e-mail discussing the "goals of the ERA", The Hartford's salesman stated:

> The expectations of the ERA agreements is to receive favorable status in quoting activity including but not limited to receiving favorable treatment in the bidding process (last looks), being able to achieve expected/ attractive [profit] margins either through exploring alternate solutions and value added actions by the intermediary [broker].

Further, by The Hartford's conditioning the secret payment on its receipt of profitable business, The Hartford created a significant conflict of interest between the broker and its client, because if the broker negotiated too low a premium, the broker would not receive its secret payment. The hidden payments, which were in addition to the disclosed commissions The Hartford paid the brokers, or the fees the plans agreed to pay the brokers directly, were, unbeknownst to the plans, added to their premium and resulted in increased costs for the plans.

6. Through these arrangements, The Hartford not only made affirmative, material and deceptive misrepresentations to its customer, but its conduct also resulted in contributing—in fact causing—a breach of the broker's fiduciary duties to its client. In essence, The Hartford purchased the loyalty of the broker.

7. Throughout the period 1998 through 2004, The Hartford paid out millions of dollars of undisclosed payments, causing the plans to pay more in annuity premiums than they should have paid. In return, The Hartford captured upwards of $800 million dollars worth of annuity placements, and reaped millions of dollars in investment profits on the money it invested from sales it might otherwise not have made, as well as future profits not yet realized from its long-term investment of the premiums.

8. In pursuing these and other corrupt business practices, The Hartford violated the Connecticut Unfair Trade Practices Act. Pursuant to Conn. Gen. Stat. § 42-110m, the Connecticut Attorney General, in the name of the State of Connecticut, seeks restitution, disgorgement, and civil penalties for the injuries suffered by Connecticut consumers and other consumers, as well as other injunctive and equitable relief to prevent these corrupt business practices from happening again.

II. PARTIES

9. Plaintiff State of Connecticut, represented by Richard Blumenthal, Attorney General of the State of Connecticut, brings this action at the request of Edwin R. Rodriguez, Commissioner of the Department of Consumer Protection for the State of Connecticut, pursuant to Conn. Gen. Stat. § 42-110m of the Connecticut Unfair Trade Practices Act (CUTPA).

10. Defendant The Hartford Financial Services Group, Inc. is a Delaware corporation with its principal place of business in Hartford, Connecticut. The Hartford Financial Services

Group, Inc. sells a variety of insurance products to businesses including group annuity products. At all times relevant to this Complaint, The Hartford Financial Services Group, Inc. transacted business in the State of Connecticut through its various local and regional offices. Decisions regarding the group annuities at issue here were made in Connecticut by employees of The Hartford Financial Services Group, Inc. working in Connecticut. The agreements to make the undisclosed contingent commission payments were entered into in Connecticut. The secret payments to the brokers were sent from Connecticut, and the ill-gotten premium The Hartford Financial Services Group, Inc. derived from the scheme were received in Connecticut.

11. Defendant Hartford Life, Inc. is a Delaware corporation with its principal place of business in Simsbury, Connecticut. Hartford Life, Inc. is a leading provider of investment vehicles designed to help both individual investors, institutions, corporate and government employers, and high-net-worth individuals. At all times relevant to this Complaint, Hartford Life, Inc. transacted business in Connecticut through its officers, employees, and agents.

12. Whenever reference is made in this Complaint to any representation, act or transaction of any entity, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents or representatives while actively engaged in the course and scope of their employment, did or authorized such representations, acts, or transactions on behalf of that entity.

III. THE PLAYERS

A. The Hartford

13. The Hartford Financial Services Group, Inc. is one of the oldest and largest investment and insurance companies based in the United States with nearly 30,000 employees and $2.1 billion in income in 2004. The Hartford Financial

Services Group, Inc. is a leading provider of investment products—annuities, mutual funds, college savings plans—as well as life insurance, group and employee benefits, automobile and homeowners' insurance, and business insurance. Through its employees, as well as through independent agents, brokers and financial institutions, The Hartford Financial Services Group, Inc. serves millions of customers worldwide. In 2005, The Hartford Financial Services Group, Inc. was ranked 88th on the Fortune 100 list of companies.

14. Hartford Life, Inc., along with its subsidiary, Hartford Life and Annuity Company, is one of the most respected insurance companies in the United States which, as the company touts, "has been meeting its customer obligations since 1902." Among the investment products sold through the Hartford Life and Annuity Company are variable and fixed annuities, mutual funds, 401(k) plans, terminal and maturity funding agreements, structured settlement and institutional annuities and guaranteed investment contracts. The Hartford Financial Services Group, Inc., Hartford Life, Inc., and its subsidiary, Hartford Life and Annuity Company will, hereinafter, be referred to as "The Hartford".

B. The Brokers

15. In the annuity market, as is common with many other investment and insurance products sold within the United States, brokers play a significant and important role in assisting institutional clients in the selection of an appropriate annuity. The broker's role with respect to the purchase of a single premium group annuity for a pension plan is to assist the client—often the plan administrator or fiduciary—with assessing the myriad issues and factors necessary to selecting the "safest available annuity" for the benefit of retirement plan participants.

16. Broker Dietrich & Associates, Inc. ("Dietrich") is a Pennsylvania corporation with its principal place of business in Plymouth Meeting, Pennsylvania. Dietrich is a pension

financial services firm providing specialized annuity brokerage and consulting services to institutional clients in the area of single premium group annuity contracts and is the "largest independent broker in the single premium group annuity market." Dietrich promotes itself on its website and through other marketing materials as positioned, through its knowledge and relationships, to assist its clients in the evaluation and selection of group annuity products. Part of its sales pitch to prospective clients is that Dietrich is "totally objective in our carrier evaluation and selection process . . . ." As a result of Dietrich's expertise, experience and objectivity when evaluating potential annuities, Dietrich claims that its "clients have the assurance that contracts purchased through our organization are the most competitive available."

17. Broker Brentwood Asset Advisors ("Brentwood"), with offices in California and Florida, advertises itself as an annuity search service broker that prides itself on the "unrivaled due diligence" it provides its clients searching for the right annuity for their plan. Owing to Brentwood's "passion for excellence" and knowledge within the annuity marketplace, and the relationships it has built over the years with insurance companies, Brentwood claims to provide its clients with services "that enable the fiduciary to make an informed decision." In 2002, Brentwood estimated that it placed 69% of all group annuity contracts sold nationwide.

18. Broker BCG Terminal Funding ("BCG"), with offices in Texas, Massachusetts, Illinois, Kentucky, and California, markets itself as one of the largest terminal funding consulting placement firms in the nation. On its website, BCG tells prospective clients that it will "help them cut through the clutter" of information and choices in the annuity marketplace. BCG positions itself as "YOUR ally and confidant" and the one a client can "trust to make the proper recommendations" to "navigate you through the sea of decisions needed to make proper fiduciary choices."

19. Broker USI Consulting Group ("USI"), is part of USI Holdings Corporation, one of the United States' largest property & casualty, benefits broker, and consultants. USI is headquartered in Glastonbury, Connecticut. On its website, and through other promotional materials, USI markets itself as a firm that does not address a client's particular needs with a "preconceived notion" as to what is the right solution. Rather, when a client "partners" with USI, that client taps into the company's many consultants whose claimed goal is to "maximize the value of every dollar spent" to provide the best in "value-added service" in selecting the right investment.

IV. THE SINGLE PREMIUM GROUP ANNUITY MARKETPLACE

A. Background

20. A single premium group annuity ("SPGA") contract is a fixed income investment purchased by a plan sponsor to fund immediate annuities for retirement plan participants who are leaving their plan and wanting to receive their benefit distribution in the form of annuity income. Additionally, a SPGA is used to satisfy accrued pension liabilities for ongoing and frozen defined benefit plans when such plans are terminated, due, perhaps, to a bankruptcy, merger, restructure, or when plan liabilities are settled for other purposes. An SPGA is often purchased by an employer or plan sponsor to provide a monthly annuity benefit payment for both immediate annuitants (a company's retirees due a retirement benefit) or for deferred annuitants (those employees or plan participants not yet eligible for retirement benefits).

21. The Hartford's SPGAs often take the form of one of two different types of contracts: Terminal Funding Agreements and Maturity Funding Agreements.

22. A Terminal Funding Agreement is used in circumstances where an employer terminates a pension plan while still fulfilling its fiduciary responsibility to provide current

and future retiree benefits. Such agreements provide guaranteed, fixed periodic payments to a designated group of participants under a defined benefit plan. Terminal Funding Agreements occur due to mergers and acquisitions, bankruptcies, plant shutdowns or court ordered liquidations.

23. A Maturity Funding Agreement is a group fixed annuity that provides departing plan participants with fixed income payments for life or some designated period.

24. SPGA contracts, whether terminal or maturity, range in size from tens of thousands of dollars in premium, to upwards of hundreds of millions of dollars in premium.

25. A number of insurance companies sell SPGA contracts and compete for plan dollars in the marketplace. Among the insurance companies that sold SPGA contracts during the relevant time period are: The Hartford, Principal Life Insurance Co. ("Principal"), Travelers Insurance Co., AIG Life Insurance Co., John Hancock Life Insurance Co., Continental Assurance Company ("CNA") and United of Omaha Life Insurance Co. ("United of Omaha").

26. No two insurance companies are exactly alike and, thus, while insurance rating services such as Standard & Poor's and Moody's are helpful in assessing the credit worthiness of a given insurer, a myriad of other factors must be analyzed to ensure the plan sponsor or fiduciary chooses the "safest available annuity" when it buys a group annuity for a pension plan.

27. In 1995, the United States Department of Labor ("DOL") issued Interpretive Bulletin 95-1, which outlines some of the criteria a plan administrator or other fiduciary should consider to determine the "Safest Available Annuity" for retirement plan participants. According to the DOL bulletin, a plan administrator or fiduciary should consider its purchase decision after considering the following factors:

- The quality and diversification of the annuity provider's investment portfolio;

- The size of the insurer relative to the proposed contract;
- The level of the insurer's capital and surplus;
- The lines of business of the annuity provider and other indications of the insurer's exposure to liability; and
- The structure of the annuity contract and the guarantees supporting the annuities, such as the use of separate accounts.

28. Given the number of factors to be considered, the breadth and diversity of insurance companies in the market, the particular needs of a particular plan, and the overarching requirement that the selected insurer meet the safest annuity obligation imposed by the Employee Retirement Income Security Act of 1974 ("ERISA"), it is only prudent that a plan administrator or fiduciary should seek the guidance, expertise and experience of an SPGA broker to assist the plan in its due diligence in order to make an appropriate investment choice.

B. The Annuity Selection Process

29. While the process of purchasing an SPGA contract for a plan differs depending on the needs of the plan and the broker selected to consult and shepherd the process, most SPGA brokers generally follow a similar procedure:

- Consult with the plan regarding the timing and structure of the annuity purchase;
- Prepare the request for proposal ("RFP") incorporating all of the plan's benefits;
- Send the RFP and accompanying participant data to all of the bidding insurance companies and answer their questions;
- Conduct the bidding process;

- Negotiate each insurance company to its lowest price;
- Make a written recommendation to the plan sponsor or fiduciary;
- Manage any post-sale flow of data from the plan to the selected insurance company;
- Assist the plan sponsor's legal team with the wording of the final annuity contract and certificates; and
- Oversee the process of delivery of the annuity contracts or certificates to plan participants and beneficiaries.

30. The bid process followed by most SPGA brokers is generally accomplished in two phases: a round of preliminary bidding, followed by a round of final bidding. The time between the preliminary and final bids may be a matter of days, weeks or months, depending on a number of factors including changes in plan data, interest rate fluctuations (investment yields, from which the carrier expects to pay the annuitants, are a function of the rates at which insurers expect to invest the plan's premium), and other vagaries of that specific purchase.

31. Most, if not all bids, are conducted through an open bid. In other words, after the broker receives each bidding insurer's preliminary bid, the broker will usually share the results of the preliminary bid with all the bidders. Thus, each insurance company knows not only its own bid, but the bid of each of its competitors prior to the final bid.

32. The final bid is usually set to occur on a specific date at a specific time. Those bidding insurance companies that remain in the bidding after the preliminary round are expected to provide their final bid by a predetermined deadline. Sometimes, but by no means the rule, the broker might

attempt to further negotiate with the two or three lowest bidders after the final round to obtain the lowest price for the plan.

33. Consistent with the broker's role as the plan sponsor's independent expert or fiduciary hired to guide the plan sponsor through a sea of decisions, the plan expects, because the law requires, that the broker's duty is to act solely for the benefit of its principal—the plan sponsor.

34. Brokers are compensated for their services in one of two ways: (a) a fee negotiated between the plan sponsor and the broker, which is paid directly to the broker or (b) a commission agreed to by the plan sponsor and paid by the selected insurance company, which usually builds the commission into the final annuity premium.

V. THE HARTFORD'S SPGA BROKER COMPENSATION PACKAGE

35. Beginning at least as early as 1998, and continuing through 2004, The Hartford entered into written and verbal agreements with SPGA brokers, including Dietrich, Brentwood, BCG and USI, purportedly for the purpose of reimbursing those brokers for expenses they incurred in placing The Hartford's group annuity product with a particular plan. These agreements were formally referred to as Expense Reimbursement Agreements or Marketing Allowances (hereafter collectively referred to as "ERAS"). In addition, for certain times throughout the period covered by this Complaint, The Hartford also entered into a Consulting Agreement with Brentwood, which was supposed to reimburse Brentwood for certain specified services that broker was to provide for The Hartford. The compensation to be paid to Dietrich, Brentwood, BCG and USI pursuant to these agreements was in addition to, not in, lieu of, the commissions or fees they received for their services to the plans.

A. Expense Reimbursement Agreements

36. The overall stated purpose of the ERA was to "reimburse [the broker] for certain reasonable administrative business expenses incurred by [broker] in supporting . . . the placement of single premium group annuity business with The Hartford." The reimbursable expenses included, but were not limited to, "training expenses, administrative support expenses, and miscellaneous selling expenses, not reimbursed from any other source."

37. Although the precise terms and conditions of the written ERA varied somewhat during the relevant time period, depending on the year and/or broker involved, the essential terms remained constant:

- The Hartford conditioned payment of the ERA on "evidence" that the expenses were incurred, thus requiring the broker to submit an expense account report or voucher detailing the expenses;
- Expenses were reimbursed up to, generally, 1% of the premium of a particular placement, although there were times when the amount was higher or lower;
- The business had to be "profitable", meaning supported by the final price;
- The Hartford had the right to audit the broker to verify the accuracy of expenses; and
- The Hartford required the broker to treat the ERA as confidential, unless disclosure was required by law, or if the broker deemed it "appropriate" to disclose to a prospective purchaser of SPGAs.

38. Additionally, the ERA contract generally was structured to hinge the amount of reimbursement the broker was eligible to receive on the broker's reaching certain "quarterly" and "annual" ERA reimbursement thresholds.

39. To qualify for a quarterly reimbursement, the broker had to meet predetermined quarterly premium thresholds. The threshold was established by The Hartford or, at times, through negotiation with the broker. For each stated quarterly premium threshold, there was a corresponding maximum expense reimbursement the broker would receive. For instance, under Dietrich's 2003 ERA, if Dietrich placed less than $5 million of premium in a three month period, its maximum quarterly reimbursement would be $37,500. On the other hand, under the same agreement, if Dietrich placed over $15 million in a quarter, its maximum quarterly reimbursement would be $375,000.

40. Under the "annual" feature of the ERA, a broker was entitled to qualify for an increased reimbursement if the broker's annual premium threshold exceeded certain predetermined thresholds. As an example, pursuant to Brentwood's April, 2002 ERA, if Brentwood placed more than $100 million in premium in a year, then Brentwood could earn up to an additional half a million dollars over and above its maximum quarterly ERA payments.

B. Consulting Agreements with Brentwood

41. Beginning at least as early as April, 2002, The Hartford also entered into a series of consulting agreements with Brentwood.

42. According to the written consulting agreement, the purpose of the contract was for Brentwood to "provide The Hartford with consulting and marketing advice with respect to the single premium group annuity business." Such advice included "information on industry best practices and trends", as well as "new product opportunities." The consulting agreement allowed for Brentwood to take on "[a]dditional specific consulting projects" with the concurrence of The Hartford.

43. In return for providing The Hartford with its consulting services, Brentwood was compensated $30,000 per quarter.

Beginning some time around 2004, however, the consulting payments were restructured and Brentwood received $3,000 per month.

44. Brentwood's consulting services agreement was part of its ERA with The Hartford. Hence, while Brentwood was receiving a $30,000 per quarter consulting retainer from The Hartford, it still had the opportunity for an additional payout if its annual SPGA premium placed with The Hartford exceeded $100 million. Beginning in 2004, when Brentwood's consulting payment was lowered to $3,000 per month, the annual SPGA premium threshold required to trigger an additional payout was also lowered, such that Brentwood was eligible for an additional payout if its annual SPGA premium exceeded $20 million.

VI. HARTFORD'S ERAs AND CONSULTING AGREEMENTS ARE A SHAM

45. The Hartford's ERAs and consulting agreements were nothing more than an incentive compensation arrangement for brokers that established a pay for performance model. As articulated in more detail below, The Hartford's definition of a broker's "performance" went well beyond bringing The Hartford a certain level of business.

A. The ERAs were Intended to Steer Business—"[H]ang a . . . carrot"

46. It cannot be denied that brokers incur expenses in marketing their services to prospective plans looking to purchase SPGAs, and in preparing RFPs, conducting bids and finalizing annuity contracts. Typical expenses are those associated with a broker's overhead, i.e., salaries, marketing materials, telephone, facsimile, computer expenses, rent, etc. Additional expenses may include travel, entertainment and access to credit information services. These business expenses are usually and rightly viewed by the buyer or here — the plan sponsor—as expenses covered under the fee paid by

the plan or the commission paid by the insurance company. In other words, the fee or commission should not be just pure profit to the broker.

47. The Hartford's ERAs did not simply reimburse brokers for expenses; they reimbursed only those brokers that delivered a certain amount of business to The Hartford.

48. At its root, what The Hartford was "trying to accomplish" through the ERA was, as laid out in an internal email, to "change[] the buying habit of the intermediary . . . ." Or, even more succinct, the ERA "has to be used to stimulate business that we otherwise would not get."

49. An internal The Hartford document, labeled "Confidential For Internal Discussion Only" (emphasis in original), noted that among the "objectives" of the ERA was that it "encouraged [a] continual flow of business", and "encourages a large dollar volume of business".

50. To acquire this flow of business, The Hartford crafted a "production based" model for "distributors." Thus, the thresholds established for the brokers, whether quarterly or annual, were supposed to be a "stretch number" with a "big dollar [payment] associated with that." The higher the threshold, the more business the broker needed to produce to receive its incentive payment.

51. In January, 2001, while discussing whether to enter into an ERA with USI, one of The Hartford's salesman explained to another of the company's executives that the "marketing allowance, as it was explained to me, is suppose [sic] to be a stretch in which 80-90% of the [brokers] would not reach it." The two employees of The Hartford then reviewed USI's 2000 production, roughly $11,500,000, and their expectation for USI's business in 2001 to "see if it makes sense to hang a $60 [thousand dollar] carrot." The Hartford described this arrangement in a proposal to USI of its "production based

override program", offering USI a $60,000 payout in return for 2001 production of "$30 to $40 million".

52. In 2001, USI settled on $80,000 in calculated payments in return for $40 million in production. The "same deal applied for BCG, at least on paper."

53. In approaching these thresholds and payments, however, The Hartford reserved its "best deal for [its] best customer[s]"—Dietrich and Brentwood. Overall, as summarized by an executive of The Hartford in an internal email, "distribution partnerships"—ERAs—worked, as The Hartford believed it gained an "advantage" because the brokers "like our money." Or, as The Hartford salesman explained the ERA program to BCG, "[b]ottom line was, you sell business with [The Hartford] you will make your money."

B. The Brentwood Consulting Agreements—Nothing More than an Upfront ERA

54. Contrary to the purpose purported in its written consulting contract with Brentwood, The Hartford had little interest in the consulting and marketing services Brentwood agreed to provide. Rather, both The Hartford expected and Brentwood understood that The Hartford was secretly paying Brentwood in advance for future production.

55. Beginning some time in March, 2002, Brentwood's executives raised the idea of a consulting agreement with The Hartford's executives. At that time, revenues for Brentwood's brokerage business were lower than expected. As a result, Brentwood's principal, Neil Ronco, discussed the concept of an "upfront" quarterly payment from The Hartford that could be disguised as a "consulting" arrangement.

56. The concept was clearly explained in a March, 2002 email from The Hartford's salesman to his superiors: Brentwood "would be placed on a 12-month retainer for $120,000 ($10,000) . . . . If they do not produce the business, then we

do not renew the next year or the difference is made up the following year." Moreover, clearly establishing that the payment was for production, not consulting or marketing advice, the email added, "[w]hen they produce over that amount, different projects can be added to account for the consulting fee in the additional amount."

57. In a series of meetings in March 2002, some by phone and some face-to-face, Brentwood and The Hartford executives discussed and eventually agreed to add the consulting agreement into the ERA that Brentwood had previously entered into with The Hartford. The concept ultimately agreed to by The Hartford was consistent with that first raised by Ronco: a $10,000 monthly payment to Brentwood and, as spelled out in the handwritten notes of one of The Hartford's salesmen intimately familiar with the consulting deal, "as the business comes in, increasing the quarterly consulting piece . . . ."

58. The first consulting agreement was executed in April, 2002. The $10,000 "consulting amounts" paid to Brentwood on a monthly basis were "built" into the SPGA premium The Hartford quoted for Brentwood's clients.

C. Labeling the ERA as Payment for "Expenses" was a Ruse

* * * *

Hartford disclosed only the commissions attributable to the annuity contract. Not once did The Hartford disclose the ERA amounts it had paid the brokers, even though those payments were directly attributable to each annuity contract.

87. Yet, the plans unknowingly were subsidizing the ERA and consulting payments as, in almost every instance, The Hartford built the ERA and consulting payments into the premiums it charged.

88. For example, in October 2001, Dietrich acted as broker for an SPGA purchase by Crown Vantage, Inc. Under the terms of the agreement between Crown Vantage, Inc. and Dietrich, the broker received a $168,287 commission. In addition, unknown to Crown Vantage, Inc., three months after The Hartford was awarded the contract the insurer paid Dietrich an additional undisclosed $841,437.94. The additional payment was built into the premium without Crown Vantage, Inc.'s knowledge.

89. Similarly, when Brentwood brokered the Willbros U.S.A., Inc. Pension Plan termination, The Hartford, as the winning carrier, paid Brentwood a duly disclosed $21,368 commission, plus an undisclosed ERA payment of $28,492, which the client nonetheless paid for because it was secretly priced into the premium.

B. The Hartford Knew that Brokers Failed to Disclose the ERAs to the Plans

90. The Hartford knew, or should have known, that the brokers failed to disclose to their own clients the existence of ERAs, consulting agreements, and the payments the brokers received thereunder.

91. The Hartford's written ERAs and consulting agreements contained an express confidentiality clause that significantly limited the brokers' ability to disclose the agreements to third parties.

92. Further, The Hartford knew, or should have known, that the brokers failed to disclose the payments received pursuant to ERAs and consulting agreements, because The Hartford itself omitted this information from its own written communications with plan sponsors and fiduciaries, thereby greatly facilitating concealment of this material fact.

93. Communications between the brokers and The Hartford during the relevant period confirm The Hartford's knowledge

that the brokers were not disclosing to their clients even the existence of the ERAs and consulting agreements, much less the payments the brokers were receiving under those agreements. On at least one occasion, The Hartford was expressly asked by Brentwood not to disclose the ERA if asked by GE Consumer Finance, Brentwood's client. On several other occasions, USI's employees told The Hartford's SPGA sales team in emails that its compensation should total 3%: "The client will see the 2% in the proposal, USI should receive the other 1% as an ERA."

94. The Hartford's knowledge is concisely demonstrated in an internal document prepared by IIP personnel within two weeks of the New York Attorney General's October, 2004 lawsuit against Marsh & McLennan ("MMC"). The charges alleged in that complaint included allegations that MMC engaged in bid rigging and steering of contracts for property and casualty insurance to preferred insurance companies in return for u disclosed payments from those insurers, including The Hartford, specifically named in the complaint as a co-conspirator.

95. The internal review commenced by The Hartford's IIP as a result of the MMC complaint acknowledged that "we have marketing and expense reimbursement agreements with some distributors . . . ERA disclosure is left to brokers . . . [although] [w]e do not believe they routinely disclose existence of ERAs."

VIII. THE HARTFORD HAS BOUGHT THE LOYALTY OF THE BROKERS

A. The Brokers are Fiduciaries to the Plans

96. In purchasing an SPGA contract for a retirement plan, the plan sponsor or fiduciary exercises the heavy responsibility of investing enormous assets with an insurance company that will provide long-term financial security to the plan's beneficiaries.

97. Plan sponsors and fiduciaries enlisted and engaged the SPGA brokers to assist in the purchase of this investment. Indeed, brokers are retained to provide unbiased, competent and independent advice on the selection of an insurer, to negotiate the SPGA premium to the lowest price ~~available~~, and to provide each plan sponsor with a free and frank disclosure of all the relevant information necessary to allow the plan sponsor to make the best purchase decision for its beneficiaries. Not surprisingly, the brokers, Dietrich, Brentwood, BCG and USI all have marketed themselves, in essence, as the entities that can provide what the plans essentially lack: the special knowledge, experience, resources and skill to make correct and appropriate choices in purchasing SPGAs.

98. The fiduciary relationship between the SPGA brokers and their clients requires each broker to act solely for the benefit of the plan it is representing and not for itself or some other third party.

99. Communications and agreements between plans and brokers underscore the fiduciary nature of the relationship:

- In a June, 2000 letter to Mount Sinai Medical Center related to its purchase of an SPGA, Brentwood referred to a DOL bulletin advising plan fiduciaries that unless they possess the "necessary expertise" to evaluate critical annuity selection factors, the fiduciary needs to "obtain the advice of a qualified independent expert." Brentwood went on to state that, "[i]n our opinion, by following [Brentwood's recommendation] Mt. Sinai has satisfied this requirement."
- In a June, 2002 Annuity Service Proposal prepared for the American Forest & Paper Association ("AF&PA"), Dietrich "acknowledged" and "accepted" its "role as an independent fiduciary" to the AF&PA's plan.

- In late 2004, BCG, in response to a number of questions posed by the Trustees of Hillcrest Medical Nursing Institute, which was in the process of retaining a broker for the purchase of an SPGA for its plan, stated that the "DOL does not require plan fiduciaries to hire independent experts to assist [in a plan purchase], but it is strongly recommended that they do." BCG went on to emphasize that it "realizes that we are the experts . . ."
- In a November, 2000 letter to the Rogers, Lunt & Bowlen Company Employees' Pension Plan, USI described its role in advising the plan, including its analysis of underwriting requirements, financial reports, contract specifications from each bidding insurer and assisting the plan in making "an informed decision."

100. The Hartford also understands that its SPGA customers should and often do retain the services of a broker with specific knowledge of these investments and the process required to complete the transaction. In fact, The Hartford's interne website for terminal funding investments still recognizes that "a professional knowledgeable about the [annuity purchase process] is brought in and may assist the plan sponsor in making required filings, reviewing the plan's provisions and liabilities and articulating needed data in order to obtain initial bids from insurers." The site goes on to say that once final bids are received from insurers, they are "then analyzed and reviewed by the plan sponsor with the assistance of a broker/consultant."

101. In short, at all times relevant to this Complaint, The Hartford knew that Dietrich, Brentwood, BCG and USI, by virtue of their role in a plan's selection and purchase of an SPGA, owed a fiduciary duty to the plans.

B. ERAs and Consulting Agreements Violated the Brokers' Fiduciary Duty

102. The Hartford's ERAs and consulting agreements saddled the brokers with a conflict of interest that induced the brokers to breach their fiduciary duty and place the interests of The Hartford ahead of their clients' interests.

103. In many cases, the secret payments The Hartford has made to a broker are equal to or larger than (a) the fees paid to the broker by the plan or (b) the disclosed commission paid

* * * *

G. Crown Vantage, Inc.

150. Crown Vantage, Inc. ("Crown") was the former sponsor of a defined benefit pension plan that terminated in the summer of 2001 (Crown filed for Chapter 11 bankruptcy in March, 2000). At the time, Crown was headquartered in Ohio with manufacturing plants located throughout the country, including New Hampshire, Michigan, Massachusetts and Virginia.

151. In July 2001, Crown engaged Dietrich to provide placement services for Crown's purchase of an SPGA. Dietrich and Crown agreed that the successful insurer would pay the broker a commission on a scale that ranged from .15%-25%, depending on the size of the purchase. Among the services Dietrich agreed to perform for Crown pursuant to a written agreement were: (a) interpret the plan specifications and prepare the RFP, (b) work with Crown in determining credit ratings requirements, (c) conduct the bidding "to ensure aggressive quotes" and, (d) negotiate "the most aggressive quote possible from each company."

152. The final three bidders for the Crown placement were: Metropolitan Life Insurance Company ($81,545,000), Principal ($81,625,000) and The Hartford ($84,143,794). On or about October 10, 2001, Crown purchased an SPGA from

The Hartford, the third lowest bidder. That same day, both Dietrich and Crown executed The Hartford's application for annuity, which identified the main terms of the purchase and disclosed a commission of .20%, or $168,287.58. The Hartford's internal pricing documents estimated that its return on equity on the placement would amount to 13.04%.

153. On or about January 28, 2002, Dietrich submitted an "SPGA Expense Voucher" to The Hartford which detailed the "business expenses" Dietrich purportedly had incurred in connection with the Crown placement. The expenses claimed on the voucher totaled $841,437.94, and included $244,017 for "Document Interpretation and Preparation of Bid Specifications", "Payroll Expenses" of $151,458.83, and $126,215.69 for "Credit Research & Documentation". These "services" and others itemized on the voucher, were essentially the same services that Dietrich had agreed to provide to Crown in return for the agreed-upon commission. Moreover, the entire $841,437.94, which The Hartford secretly paid Dietrich for its winning the Crown placement, was priced into the final premium. Thus, without knowing it, Crown paid twice for the same services.

H. Research Corporation

154. On or about October, 2002, Research Corporation ("Research"), located in Tucson, Arizona, began the search for a broker to use in connection with the termination of its defined benefit pension plan. In a letter to Brentwood's Ronco, Research asked a series of questions to assist the company in choosing an appropriate broker. Among the questions posed to Brentwood was a description of "the way you are compensated" for the services Brentwood would provide to Research.

155. In his October 22, 2002 written response to Research, Ronco promoted his company as the "Brentwood Difference" and represented that Brentwood would "aggressively nego-

tiate the lowest possible price" and fulfill its "fiduciary obligation" by "choosing the annuity provider that best serves the interests of the participants and beneficiaries." In response to Research's request for information on the manner in which Brentwood is compensated, Ronco indicated that "[w]e can be compensated in one of two ways, a direct fee from [Research] or a commission from the winning carrier." Ronco went on to recommend a "flat fee of $18,000".

APPENDIX E

Agreement Among the Attorney General of the State of Connecticut and the Attorney General of the State of New York, and The Hartford Financial Services Group, Inc. and its subsidiaries and affiliates (collectively "Hartford") dated May 10, 2006

WHEREAS, the Connecticut Attorney General has commenced an action against The Hartford Financial Services Group, Inc. and Hartford Life, Inc. pursuant to the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. (§§ 42-110a et seq.) dated May 10, 2006 (the "Connecticut Complaint") related to Hartford's practices in the marketing, sale, or placement of terminal and maturity funding single premium group annuity contracts to pension plan sponsors ("Terminal/Maturity Funding Group Annuity(ies)") and has conducted an investigation related thereto (the "Connecticut Attorney General's Investigation");

WHEREAS, the New York Attorney General has commenced an action against The Hartford Financial Services Group, Inc. and Hartford Life, Inc. pursuant to Executive Law § 63 (12) and the common law of the State of New York dated May 10, 2006 (the "New York Complaint") related to Hartford's practices in the marketing, sale, or placement of Terminal/Maturity Funding Group Annuity(ies) to pension plan sponsors and has conducted an investigation related thereto (the "New York Attorney General's investigation");

WHEREAS, the Connecticut and New York Attorneys General have alleged that Hartford unlawfully deceived its Terminal/Maturity Funding Group Annuity pension plan customers by: (a) participating in schemes to steer business to Hartford; and (b) providing false information to Hartford's Terminal/Maturity Funding Group Annuity pension plan customers regarding the compensation paid to brokers of Terminal/Maturity Funding Group Annuity(ies);

WHEREAS, without admitting or denying any claim in the Complaints, Hartford is entering into this Agreement prior to any court making any findings of fact or conclusions of law pursuant to any allegations by the Attorneys General;

WHEREAS, Hartford has been and is continuing to cooperate with the investigations being conducted by the Connecticut Attorney General and the New York Attorney General (collectively the "Attorneys General");

WHEREAS, in the wake of the Attorneys General's Investigations, Hartford has agreed under this Agreement (the "Agreement") to implement a number of business reforms;

WHEREAS, nothing herein shall be construed to apply to any business or operations other than Terminal/Maturity Funding Group Annuity(ies);

WHEREAS, the Attorneys General and Hartford wish to enter into this Agreement to resolve all issues related to Hartford raised to date in the Connecticut Attorney General's Investigation and the New York Attorney General's Investigation;

WHEREAS, the Attorneys General find the relief and agreements contained in this Agreement appropriate and in the public interest, and are willing to accept this Agreement as a settlement of the Connecticut Attorney General's Complaint and Investigation and the New York Attorney General's Complaint and Investigation;

WHEREAS, this Agreement is entered into solely for the purpose of resolving the Complaints and is not intended to be used for any other purpose; and

NOW THEREFORE, Hartford and the Attorneys General hereby enter into this Agreement with a statement of apology attached as Exhibit 1, and agree as follows:

MONETARY RELIEF

A. Terminal/Maturity Funding Group Annuity Fund

1. On or before May 19, 2006, Hartford shall pay $16,100,000 into a fund (the "Terminal/Maturity Funding Group Annuity Fund") created and held by Hartford to be paid to Hartford's pension plan customers that purchased Hartford's Terminal/Maturity Funding Group Annuity(ies) during the period from January 1, 1998 through December 31, 2004 using either Brentwood Asset Advisors, LLC, or USI Consulting Group, or Dietrich & Associates, or BCG Terminal Funding Company, or those brokers' or consultants' predecessors, as their broker or consultant, and at the time of the sale, their broker or consultant had an expense reimbursement or other production-based incentive agreement, including but not limited to a consulting agreement or marketing allowance agreement, with Hartford and (i) the sale resulted in a payment to the broker or consultant pursuant to the expense reimbursement or other production-based incentive agreement, or (ii) an amount reflecting the payment for an expense reimbursement or other production-based incentive agreement was added to the premium but not otherwise paid to the broker or consultant or (iii) the sale was credited toward achieving a threshold to obtain such payment under such an agreement (the "Eligible Customers"). All of the money paid into the Terminal/Maturity Funding Group Annuity Fund and any investment or interest income earned thereon shall be paid to Eligible Customers pursuant to this Agreement. No portion of the Terminal/Maturity Funding Group Annuity Fund shall be considered a fine or a penalty.

2. The Terminal/Maturity Funding Group Annuity Fund shall be invested in a designated money market fund subject to the prior approval of the Attorneys General.

3. Hartford shall (a) by June 9, 2006 calculate the amount of money each of the Eligible Customers paid for Terminal/

Maturity Funding Group Annuity(ies) with inception dates during the period from January 1, 1998 through December 31, 2004 using either Brentwood Asset Advisors, UST Consulting, Dietrich & Associates, or BCG Terminal Funding or those brokers' or consultants' predecessors as their broker or consultant where at the time of the sale, their broker or consultant had an expense reimbursement or other production-based incentive agreement, including but not limited to a consulting agreement or marketing allowance agreement, with Hartford and (i) the sale resulted in a payment to the broker or consultant pursuant to the expense reimbursement or other production-based incentive agreement, or (ii) an amount reflecting the payment for an expense reimbursement or other production-based incentive agreement was added to the premium but not otherwise paid to the broker or consultant or (iii) the sale was credited toward achieving a threshold to obtain such payment under such an agreement (the "Eligible Annuities"); (b) within ten days of completing these calculations, file a report with the Attorneys General, certified by an officer of Hartford, setting forth: (i) each Eligible Customer's name and address; (ii) the Eligible Customer's Eligible Annuity(ies) (by group annuity number(s)); (iii) the amount the Eligible Customer paid in premiums for each Eligible Annuity; and (iv) the amount each Eligible Customer is eligible to receive from the Terminal/Maturity Funding Group Annuity Fund, which shall equal each Eligible Customer's pro rata share of the Terminal/Maturity Funding Group Annuity Fund as calculated by multiplying the amount in the Terminal/Maturity Funding Group Annuity Fund by the ratio of the Eligible Customer's total paid premium for Eligible Annuity(ies), divided by the total paid premium for all Eligible Annuities; and (c) by July 10, 2006, send a notice to each Eligible Customer, setting forth the items in (b)(ii) through (iv), above, and stating that the amount paid may increase if there is less than full participation by Eligible Customers in the Terminal/Maturity

Funding Group Annuity Fund (the "Annuity Notice"). The form of the Annuity Notice shall be subject to the prior approval of the Attorneys General.

4. In the event impediments arise with respect to the identification of Eligible Customers, or the distribution from the Terminal/Maturity Funding Group Annuity Fund to a particular Eligible Customer, both the Attorneys General and Hartford agree to use their best efforts to achieve the parties' stated intention to distribute to each Eligible Customer their pro rata share of the Terminal/Maturity Funding Group Annuity Fund. Any amounts not distributed to Eligible Customers, despite the best efforts of the parties, shall be distributed to Participating Customers, as defined in paragraph 5, consistent with paragraph 9 of this Agreement

5. Eligible Customers who receive an Annuity Notice and who voluntarily elect to receive a cash distribution (the "Participating Customers") shall tender a release in the form attached hereto as Exhibit 2 on or before November 7, 2006.

6. On or before November 22, 2006, Hartford shall pay each Participating Customer the amount that that Participating Customer is eligible to receive from the Terminal/Maturity Funding Group Annuity Fund as set forth in paragraph 3(b)(iv) above, and any interest or investment income earned thereon.

7. On or before December 7, 2006, Hartford shall file an interim report with the Attorneys General, certified by an officer of Hartford, listing all amounts paid from the Terminal/Maturity Funding Group Annuity Fund.

8. In the event that any Eligible Customer elects not to participate or otherwise does not respond to the Annuity Notice (the "Non-Participating Customers"), the amount that such policyholder was eligible to receive from the Terminal/Maturity Funding Group Annuity Fund as set forth in paragraph 3(b)(iv) may, up until January 6, 2007, be used by

Hartford to satisfy any pending or other claims asserted by Non-Participating Customers relating to the Terminal/ Maturity Funding Group Annuity allegations, set forth in the Complaints, provided that: a) in no event shall a distribution be made from the Terminal/Maturity Funding Group Annuity Fund to any Non-Participating Customer until all Participating Customers have been paid the full aggregate amount set forth in paragraph 3(b)(iv) above, and any interest or investment income earned thereon; and b) in no event shall the total payments from the Terminal/Maturity Funding Group Annuity Fund to any Non-Participating Customer exceed 80% of the amount that Non-Participating Customer was originally eligible to receive as set forth in paragraph 3(b)(iv).

9. If any money remains in the Terminal/Maturity Funding Group Annuity Fund as of January 6, 2007 after distribution as provided in paragraphs 6 and 8, any such funds shall be distributed by January 22, 2007 on a pro rata basis to the Participating Customers.

10. In no event shall any of the money in the Teminal/ Maturity Funding Group Annuity Fund or the investment or interest income earned thereon be used to pay or be considered in the calculation of attorneys' fees.

11. In no event shall any of the money in the Terminal/ Maturity Funding Group Annuity Fund or the investment or interest income earned thereon be used to pay or be considered in the calculation of commissions, administrative or other fees to Hartford.

12. On or before. February 5, 2007, Hartford shall file a report with the Attorneys General, certified by an officer of Hartford, listing all amounts paid from the Terminal/Maturity Fu[illegible]g Group Annuity Fund, including any payments subsequ[illegible]o the payments described in paragraph 6.

B. Fine and Penalty

13. On or before May 19, 2006, Hartford shall pay $1,950,000 as a penalty, by wire transfer to the State of Connecticut.

14. On or before May 19, 2006, Hartford shall pay $1,950,000 as a fine, by wire transfer to the State of New York.

BUSINESS REFORMS

15. Within 60 days of the date of this Agreement, Hartford shall undertake the following business reforms. Hartford will not undertake any transaction for the purpose of circumventing the prohibitions contained in this Agreement.

16. For purposes of this Agreement, Compensation shall mean anything of material value given to a Producer[1] including, but not limited to, money, credits, loans, forgiveness of principal or interest, vacations, prizes, gifts or the payment of employee salaries or expenses, provided that Compensation shall not mean customary, non-excessive meals and entertainment expenses. Hartford shall develop and implement policies for its relevant employees explaining the provisions of this paragraph as part of the written standards described in paragraph 25 below. Prior to July 10, 2006, Hartford shall submit to the Attorneys General a draft of the intended policies for their approval.

* * * *

[1] For purposes of this Agreement, "Producer" shall mean any insurance broker as that term is defined in § 2101(c) of the Insurance Law of the State of New York who sells, places or consults with clients respecting Terminal/Maturity Funding Group Annuities or any independent insurance agent as that term is defined in § 2101(b) of the Insurance Law of the State of New York and who offers Terminal/Maturity Funding Group Annuities from more than one insurer or affiliated group of insurers.

EXHIBIT 1

The Hartford apologizes to our single premium group annuity pension plan customers for the conduct that led to the actions filed by the Connecticut and New York Attorneys General. It was wrong to withhold from our pension plan customers the full amount of compensation paid to brokers in connection with the placements of these annuities. As part of the settlements, The Hartford has agreed not to pay contingent compensation for single premium group annuities.